REGULATION CHANGES ON EXPORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON
NEAR EASTERN AND SOUTH ASIAN AFFAIRS

OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

THE CHANGE IN DEPARTMENT OF COMMERCE REGULATIONS ON EXPORTS TO IRAQ, SOUTH AFRICA, SYRIA, AND SOUTH YEMEN

MARCH 18, 1982

Printed for the use of the Committee on Foreign Relations

U.S. GOVERNMENT PRINTING OFFICE
93-274 O WASHINGTON : 1982

S381-31

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REGULATION CHANGES ON EXPORTS

THURSDAY, MARCH 18, 1982

UNITED STATES SENATE,
SUBCOMMITTEE ON NEAR EASTERN
AND SOUTH ASIAN AFFAIRS OF THE
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room 4221, Dirksen Senate Office Building, Hon. Rudy Boschwitz (chairman of the subcommittee) presiding.

Present: Senators Boschwitz, Pressler, and Tsongas.

Senator BOSCHWITZ. Our hearing today is prompted by the Commerce Department's surprise notification to Congress on February 26 of changes in regulations implementing antiterrorism and foreign policy controls on exports. Iraq was removed from the official list of countries supporting international terrorism, thus opening the way for the sale of militarily useful equipment, such as transport cargo planes and trucks, without notifying Congress in advance.

The new regulations also would allow the sale of civilian aircraft, which also can be diverted to military purposes, to Syria and South Yemen without informing Congress. Both countries remain on the terrorism list. The new regulations also relax controls on the export of some items to South Africa.

The new regulations affect the foreign policy control provisions of the Export Administration Act. Under a 1979 amendment—the so-called Fenwick amendment—Congress is to be notified 30 days in advance before export licenses can be issued for goods or services valued at more than $7 million which would enhance the military potential or terrorism-support capabilities of countries which have repeatedly supported acts of international terrorism.

The Fenwick amendment, and its legislative history, underscores the view that such major sales to countries supporting terrorism have foreign policy implications and therefore Congress wants to know about them and to be consulted. In this case we were not consulted and we should have been.

We do not consider consultation with the Banking Committee to be consultation with the Senate of the United States. Therefore, I find it incredible that this decision to change the regulations and remove Iraq from the terrorism list was rushed through without any consultation with the Senate Foreign Relations Committee. I repeat, it was rushed through without any consultation with the Senate Foreign Relations Committee.

This committee's concern and interest in the matter is long and deep, and the people from the State Department should be aware of that. That is a matter of public record. The 1979 regulations should have been extended for another 30 days to allow for proper consultation, as urged by some officials and Members of Congress. Some of us sent the administration a letter on this, on March 3, 1982.

The way the decision was quietly made and then pushed through by Commerce makes it much more difficult for Congress to have confidence in the bureaucrats who are entrusted to implement our legislation. If those bureaucrats want us to legislate to make sure that they cannot do those kinds of things, they are going about it in the right way.

After all the previous disputes over aircraft and trucks sales to Libya, frigate engine sales to Iraq, one would think that officials should at least have a sense that Congress wants to be informed and consulted in advance on these matters. The repeated attempts to present a fait accompli only invite tighter controls and restrictions. Normally I am not in favor of tighter controls and restrictions, but I must say that this particular incident certainly gives me reason to pause and wonder whether or not we should impose tighter controls and restrictions.

Regarding Iraq, the Library of Congress Congressional Research Service this week completed a study of publicly available information on Iraq's support for international terrorism. According to the material compiled from radio and other press reports, terrorist groups believed to have links with Iraq took responsibility for at least a dozen attacks in 1980 and 1981. I do not have comparative statistics for other nations, but a dozen attacks is a large number of attacks in the international terrorism scene.

Half of these attacks were within the past year. This is by their own admission, that is, most of these attacks are by their own admission. At least, they have taken "credit" for these attacks, groups that are identified, supported or financed, or all three, with Iraq.

There are additional attacks which various intelligence sources attribute to Iraqi-backed groups, but for which the groups apparently do not issue press releases. I should also note that the committee has had the benefit of CIA briefings and studies on Iraq, and it may be that we will have to clear the room today and go into a secret session in the event all of you gentlemen are cleared for such a session.

I would like to make it clear that we are not talking about abstract incidents of terrorism, not neat little graphs, or sales charts of aircraft sales. We are not talking about situations in which civilians are being accidentally killed in attacks on military installations.

We are talking about the deliberate throwing of hand grenades at people or planting of bombs in houses of worship, and school children and shoppers being killed—not by accident but by intentional acts of terrorism.

Today's hearing will also cover the relaxation of controls on the sale of aircraft to Syria and South Yemen and other items to South Africa. The removal of the civil aircraft controls may well violate the intent of the Fenwick amendment, which specifically states Congress

is to be informed about proposed sales which would enhance the military logistical capability of countries on the terrorism list.

Despite the claims that the congressional scrutiny has hurt business, sales to Iraq have actually doubled since 1979, from approximately $443 million on an annual basis to $913 million in 1981. The Commerce Department material fails to note that, or the fact that we have approved the sale of five large airliners to Iraq last year.

Our first witness this morning is Ernest Johnston, Deputy Assistant Secretary of State for Economic Affairs. He will be accompanied by Joseph Twinam, Deputy Assistant Secretary of State for Near Eastern Affairs, and Frank Perez, Acting Director of the Office for Combating Terrorism in the State Department. I also understand there will be someone from the African Bureau here today.

Mr. JOHNSTON. That is Mr. David Dlouhy, who is the South African Desk Officer.

Senator BOSCHWITZ. The Commerce Department's witness will be Mr. Vincent DeCain, Director of the Office of Export Administration. I understand that the Assistant Secretary of Commerce, Lawrence Brady, who was asked to testify, has not come?

Mr. DECAIN. Yes, sir, that is correct. His schedule is such that it was almost impossible for him to make an appearance here this morning.

Senator BOSCHWITZ. He was asked last week. It is impossible for him to come?

Mr. DECAIN. Sir, it may not have been impossible, but it was extremely difficult for him to do it.

Senator BOSCHWITZ. What does that mean, extremely difficult?

Mr. DECAIN. I am just not familiar with all of the things that are on his schedule, Mr. Chairman.

Senator BOSCHWITZ. Who else is here from the Commerce Department, sir?

Mr. DECAIN. I am here alone, Mr. Chairman.

Senator BOSCHWITZ. Without objection, at this point I will place in the record the study by the Library of Congress.

[The material referred to follows:]

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., March 16, 1982.

To: Senator Rudy Boschwitz.
From: Ellen Laipson, Foreign Affairs and National Defense Division.
Subject: Iraqi support for terrorism 1980–82.

This memorandum describes information collected from public sources on terrorist activities directly or indirectly attributable to Iraq in the past 2 years. The groups named here are committed to armed struggle against Israel; alleged Iraqi support for groups organized to oppose the governments in Oman, Iran, and Syria among others is not cited.

The "Arab Liberation Front" was founded by Iraq in 1968. Iraq, according to numerous press accounts, remains the sole source of financing for the ALF, which has claimed responsibility for a number of terrorist incidents against Israel:

(1) An attack against kibbutz Misgav 'Am on April 7, 1980,
(2) An explosion in a chemical warehouse in Jerusalem on April 12, 1980,
(3) An attack against an Israeli patrol near a Jewish settlement outside Bethlehem on May 12, 1980,

(4) An attempted assassination of Israeli Defense Minister Sharon on July 15, 1980, and

(5) Two efforts to enter Israel by motor-driven gliders on March 7, 1981. The first four of these incidents were reported by Iraqi radio; the fifth by the Washington Post.

A number of other Palestinian splinter organizations are widely thought to have links with Iraq, but cannot be proven from public sources to be primarily financed or directed by Iraq. The following are the major groups in this category.

The "Popular Front for the Liberation of Palestine" is headed by Dr. George Habash, and maintains contacts with a number of Arab governments. Official trips to Baghdad occurred in January and February 1980. On June 27, 1981, the PFLP was reported by the Agence France de Presse in Beirut to be responsible for an attack on an Athens based maritime agency allegedly used by Israeli intelligence agents. The attack left two dead and more than 50 wounded.

The "Palestine Liberation Front" claimed responsibility for an attack against Israel launched by balloon. The attempted raid against a settlement in northern Israel was reported by the Kuwaiti news service.

The "15 May Organization" distributed statements in Beirut in August 1981, claiming responsibility for attacks against the Israeli diplomatic missions in Vienna and Athens. The Iraqi radio report also associated the group with an earlier attack against El Al facilities in Rome. On March 2, 1982, an Israeli intelligence official disclosed that his government believes this organization is connected with the bombing of a Greek ship outside Haifa which took place in December 1981.

There is considerable controversy surrounding a group called El Assifa (Arabic for Storm), also known as the "Abu-Nidal" group. After breaking away from Yasir Arafat's Fatah group in the early seventies over the issue of negotiations with Israel, Abu-Nidal (a code name for Hasan Sabri al-Bana) went to Baghdad and received the protection of the Iraqi government for several years, while he mounted terrorist attacks in Syria and Jordan (See the New York Times, September 13, 1981). The Kuwaiti news agency has referred to the Abu-Nidal group as "a pro-Iraqi Palestinian commando movement" (July 29, 1980), as does the Atlanta Constitution, in an article from Beirut on September 17, 1981. Yet other accounts, including the New York Times and the London-based magazine The Middle East, suggest that Abu-Nidal may be turning increasingly to Syria for support.

In the past 2 years, this group has been associated with at least three incidents:

(1) The July 1980 assassination of Israel's commercial attaché in Belgium.

(2) The May 1981 killing of Viennese city councilman Heinz Nittel, and

(3) The August 1981 attack on a synagogue in Vienna.

Abu-Nidal may also have been involved in a September 1981 bombing incident in southern Cyprus against a company representing the Israeli shipping line Zim.

Senator BOSCHWITZ. I ask to have placed into the record a letter from Chairman Percy, Senator Pell, myself, Senator Mathias, Senator Sarbanes, and Senator Dodd with respect to this entire matter.

[The letter referred to follows:]

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., March 3, 1982.

HON. MALCOLM BALDRIDGE,
Secretary of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: We have received your communication dated February 26th, and the corrections to it dated March 3rd, concerning substantive changes proposed in U.S. export controls applied for foreign policy purposes. We were surprised to learn that the proposed changes were based on "prior briefings of Members of Congress," because we have no record of being consulted with respect to these proposed changes in United States foreign policy.

In view of this Committee's long-standing interest in, and responsibility for determination of United States policy with respect to countering international

terrorism as well as its responsibility for questions of foreign policy in general, we assume the failure to consult this Committee was an oversight. May we have your assurance that this Committee will be consulted prior to any changes in export controls maintained for foreign policy purposes?

We wish to call to your attention, also, that the Committee will examine the substance of the proposed changes. We will be in touch with you shortly in that regard.

Sincerely,

CHARLES H. PERCY,
Chairman.
CLARENCE PELL,
Ranking Minority Member.
RUDY BOSCHWITZ,
Chairman, Near Eastern and South Asian Affairs Subcommittee.
PAUL S. SARBANES,
Ranking Minority Member, Near Eastern and South Asian Affairs Subcommittee.
CHARLES MCC. MATHIAS, JR.,
Chairman, International Economic Policy Subcommittee.
CHRISTOPHER J. DODD,
Ranking Minority Member, International Economic Policy Subcommittee.

Senator BOSCHWITZ. Who wishes to proceed first?

Mr. JOHNSTON. I will begin.

Senator BOSCHWITZ. Very well. But first, let me yield to Senator Pressler.

Senator PRESSLER. Thank you, Mr. Chairman. I have a very short opening statement which will not take but a few minutes. The Commerce Committee is in session and we have a review of the Federal Trade Commission. I have to be back and forth a bit.

First of all, let me commend the chairman for calling this hearing. I want to say emphatically that the proposed export control changes as they affect sales to Iraq appear to be inadvisable at this particular time.

There is enough uncertainty and doubt over Iraqi participation in and support of terrorist activities to warrant greater caution in dealing with that government. We must avoid sending the wrong signals to our friends and to would-be terrorists. I certainly can appreciate the need to permit American companies to compete effectively in the markets of other countries, but the Fenwick-Javits amendment was adopted for a very good reason—that is, to prevent deliberate or inadvertent American subsidization of terrorism and those who support terrorists.

Thus, I hope the administration will withdraw the proposed rule change. The presumption of Iraqi innocence with respect to terrorist support activities is very dubious at this point. There is no reason to take unnecessary risks.

Mr. Chairman, I ask that a copy of a letter from Maxwell Greenberg, national chairman of the Anti-Defamation League of B'nai B'rith, be included in the record at this point. The letter is addressed to Secretary of State Haig and makes a clear case for reconsideration of the proposed rule change. I would just like to read one or two paragraphs of this letter, and then I shall yield back my time:

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Dear Mr. Secretary: The State Department's recent decision to remove Iraq from the list of nations that "have repeatedly supported acts of international terrorism" is, in our judgment, a grave error.

The record of Iraqi support for terrorism remains clear. Numerous terrorist actions during 1981 are traceable to Iraq.

And he goes on. I ask that this be inserted.

[The letter referred to follows:]

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH,
Los Angeles, Calif., March 11, 1982.

Hon. ALEXANDER M. HAIG,
Secretary of State, Department of State,
Washington, D.C.

DEAR MR. SECRETARY: The State Department's recent decision to remove Iraq from the list of nations that "have repeatedly supported acts of international terrorism" is, in our judgment, a grave error.

The record of Iraqi support for terrorism remains clear; numerous terrorist actions during 1981 are traceable to Iraq. Included among them were attacks on El Al offices in Rome and Istanbul and on Israeli missions in Vienna and Athens. Nothing has changed. This decision by our State Department will inevitably raise questions about U.S. credibility both among friends and foes.

To excuse or overlook Iraq's recent behavior, as does the Department of State's decision, is to weaken incentives for moderation throughout the region. If extremists such as the Iraqis can now become eligible for U.S. military assistance, then others in the region will infer that our government's benchmarks for civilized behavior have been lowered.

To preserve that part of peace which has already been achieved and to attract other parties to the process, we must reward true moderation and punish true extremism. That approach brought Egypt into the peace process and can work with others.

When we label extremists like the Iraqis as less than extremists we undermine all movement toward real moderation.

We urge a reconsideration of this ill-advised decision. A constructive Middle East policy requires it.

Sincerely,

MAXWELL E. GREENBERG,
National Chairman.

Senator PRESSLER. Also, Mr. Chairman, if you have not already done so, I think it would be useful to insert the list of acts in the March 16 memo to you from the Library of Congress. Perhaps you have already done that.

Is that already in the record?

Senator BOSCHWITZ. Yes, it is, Senator Pressler.

Senator PRESSLER. Thank you.

If I leave, it is not because of a lack of interest, but because I have to go to the Commerce Committee.

Senator BOSCHWITZ. When you are in the Commerce Committee, you might ask where Assistant Secretary Brady is. Perhaps he is over there.

In any case, Senator, the letter from Mr. Greenberg will be entered into the record, without objection. The third paragraph of that letter, which I have also seen, points out "to excuse or overlook Iraq's recent behavior, as does the Department of State"—or the Department of Commerce's—"decision is to weaken incentive for moderation throughout the region."

That indeed is an important aspect of the Fenwick amendment, as you point out. Certainly, people, once they are put on the list, should not necessarily remain on the list forever. But incentives have to be there for them to get off the list.

While there have been some changes in the behavior of the Iraqis in recent years, they most certainly are still very active in the field of international terrorism, which is a scourge on the world society. It certainly would be sending the wrong signals to now take them off this list or to give reconsideration or to lessen the imposition of sanctions against South Yemen or Syria.

We thank you for coming, Senator. We hope you will be able to stay here for as long as possible, Senator.

Mr. Johnston, please proceed.

STATEMENT OF ERNEST JOHNSTON, JR., DEPUTY ASSISTANT SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY: JOE TWINAM, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF NEAR EASTERN AFFAIRS; WILLIAM A. ROOT, OFFICE OF EAST-WEST TRADE; FRANK PEREZ, ACTING DIRECTOR, OFFICE FOR COMBATTING TERRORISM; AND DAVID B. DLOUHY, COUNTRY OFFICER FOR SOUTH AFRICA

Mr. JOHNSTON. Mr. Chairman, thank you for the opportunity to discuss the recent changes the administration has introduced regarding foreign policy export controls. When the Export Administration Act of 1979 was adopted, the Congress included a provision which mandated the end of foreign policy controls after a year unless they were extended by the President, and that the extension or any subsequent reextension could last no more than a year. This provision was included because of a congressional view that foreign policy export controls were being imposed too sweepingly, with damage to U.S. trading interests. This requirement insures that controls are periodically scrutinized to insure that they are truly warranted and effective.

The act specifies a number of criteria which must be weighed in deciding on any extensions. These criteria include: The probability that the controls would achieve the intended foreign policy purpose in the light of availability of goods from other countries; the compatibility of the controls with U.S. foreign policy objectives; the reaction of other countries to the controls; the likely effects of controls on the export performance of the United States and its competitive position; the ability of the United States to enforce the controls effectively; and the foreign policy consequences of not imposing the controls.

Foreign policy export controls were established at the end of 1979 and renewed with minor adjustments at the end of 1980, and for a period of 2 months at the end of 1981. This administration, after having been in office for 1 year, felt that a more fundamental and critical review of existing controls was now in order to satisfy the criteria of the act.

The repeal of the grains embargo in the spring of 1981 was also made with these criteria in mind. Our recent review produced a number of changes with respect to controls for human rights and antiterrorism reasons and special controls affecting exports to South Africa, Libya, and the Soviet Union. I would like to discuss each of the categories of foreign policy export controls.

The review did not produce any changes in controls on exports to Vietnam, North Korea, Kampuchea, and Cuba. Almost total trade embargoes are in effect. Since these export controls are an integral part of our overall policies toward these countries, the administration did not believe that it would be in the U.S. interest to redefine the export restrictions relating to any of these countries, except as part of a general improvement of relations.

We also have made no changes in controls on exports which might contribute to the proliferation of nuclear weapons.

The rationale for human rights controls on the export of crime control and detection instruments and equipment is to distance the United States from governments with poor human rights records and to encourage improvements in respect for human rights. There has been no change in U.S. policy concerning the importance of adherence to internationally recognized human rights.

However, experience with human rights export controls over the past several years has shown that some items having little, if any, was for repression of human rights were needlessly subject to a license requirement. We therefore dropped such items from the crime control and detection equipment list. Examples include television cameras, color film, ultraviolet and infrared communication detection or tracking equipment, except for police model infrared viewers, and bullet- and blast-resistant garments.

Items such as mobile crime laboratories, panoramic radio receivers, voice print equipment, polygraphs, fingerprinting equipment, psychological testing machines, handcuffs, blackjacks, police helmets, shotguns, and shock batons remain on the list.

The purposes of our export controls and shipments to South Africa are to support the United Nation arms embargo, to distance ourselves from the practice of apartheid, and to promote racial justice. In our review, we concluded that some of the controls went beyond these objectives by restricting sales of goods with minor implications for apartheid or police or military functions.

The adjustments in the new regulations reduce restrictions on trade in the civil sector, while maintaining a strong symbolic and practical separation of the United States from the enforcement of apartheid. Controls required to comply with the United Nations arms embargo, as well as additional U.S. unilateral controls on items of significance for military or police functions, are maintained.

The modifications eliminate controls on items clearly of no security significance and permit licensing on a case-by-case basis of other items under circumstances of little or no consequence to police or military functions. The previous controls prohibited the export of innocuous items not banned by other Western nations. They prevented the export of items to the private sector in South Africa if only a small portion of such items might ultimately be sold on the open market to the military and police. And they prevented the export of parts and components to third countries if those exports would constitute even an insignificant portion of goods manufactured abroad and sold to the South African military and police.

The new regulations allow the export of some items that would not contribute significantly to military or police functions, and include

de minimis provisions designed to limit other anomalous effects of the old regulations. Modifications have also been made in the regulations governing nonmilitary aircraft and computer sales to South Africa. A validated license continues to be required for the export of aircraft and helicopters and of computers for government agencies enforcing apartheid.

With respect to aircraft and helicopters, export licenses will now be subject to the condition that they may not be put to military, paramilitary, or police use.

The computer control has been modified to be more precise. The licensing requirement will specify the five government agencies primarily responsible for enforcing the apartheid system: The Departments of Cooperation and Development, Interior, Community Development, Justice, and Manpower.

The purpose of our antiterrorism controls is to underscore our strong opposition to governmental support for international terrorism. Controls are designed to insure that U.S. exports do not contribute to such support. Section 6(i) of the act requires that we maintain licensing controls on certain militarily significant items to countries the Secretary of State has designated as repeated supporters of acts of international terrorism.

After careful review of available intelligence information, the Secretary of State decided to no longer include Iraq among those countries considered to be repeated supporters of international terrorism, but to add Cuba. We continue to regard Libya, Syria, and the People's Democratic Republic of Yemen as supporters of international terrorism.

In reaching our decision on Iraq, we took particular notice of the fact that in 1981 Iraq continued the pattern of recent years of reducing assistance to individuals and groups which employ terrorist means. We have a significant interest in encouraging Iraq to take further steps in this direction. It is our belief that this change will support that objective, as well as our broader goal of focusing punitive measures on countries which are today's greatest source of support for terrorist activities.

Libya is such a source of support and we feel that it is important to draw a clear distinction between Iraq's improving record and Libya's intense and continuing involvement in international terrorist activities.

Senator BOSCHWITZ. What a comparison to make, to say that because they are better than Libya, therefore we should give them this benefit. What a point of reference that you are taking, Mr. Johnston. I simply make that as a comment.

Mr. JOHNSTON. Senator, we are trying to judge what Iraq has done in the light of the law.

We have also made some changes in the Libyan regulations. I will discuss those later, but I think the fact that we have intensified controls on Libya is a relevant fact.

Senator BOSCHWITZ. It is indeed a relevant fact. But to say that somebody is better than Libya and that their position is better than Libya's and therefore we should relax our controls or relax what we export to them because they are better than Libya, on that basis the controls are not worth very much indeed.

Mr. JOHNSTON. I did not mean to say that we were relaxing the controls because they were better than Libya. I am just pointing out the difference between these two countries.

We hope our recognition of Iraq's improved performance and the addition of Cuba——

Senator BOSCHWITZ. Pardon me. You said that "to draw a clear distinction between Iraq's improving record with respect to terrorism and Libya's intense and continuing involvement in international terrorist activities." Certainly there you are making the comparison.

Please continue.

Mr. JOHNSTON. We hope our recognition of Iraq's improved performance and the addition of Cuba will demonstrate to other countries in the Middle East, including our many friends in the region, that our export controls are truly directed toward terrorism. If Iraq were to reverse the encouraging trend of recent years, we would have to be prepared to reverse our recent action.

I should point out that shipments to the Iraqi military are not affected by our action. We are maintaining our policy of strict neutrality in the Iran-Iraq War. It is our policy not to supply military goods to either Iraq or Iran. All items which would significantly improve the military capability of either side are denied.

In the case of Cuba, we evaluated carefully the evidence of Cuban support for revolutionary violence and groups that use terrorism as a policy instrument. Cuban leaders have publicly asserted a right and a duty to provide such support. This support caused Colombia to sever diplomatic relations with Cuba in 1981.

Another modification in our foreign policy trade controls for 1982 is to exempt from our terrorism controls sales of civil aircraft for use by regularly scheduled airlines when we have received satisfactory assurance against military end use. This exception would not apply to Libya or Cuba, which are subject to stricter controls. This change is consistent with our general position that foreign policy export controls must be used to further significantly our foreign policy goals.

During the several years that antiterrorism controls have been in effect, there has been no discernible link between the sale of civil aircraft to legitimate civil end users and acts of international terrorism. We therefore concluded that it is logical to control the sales of civilian aircraft on national security rather than antiterrorism grounds.

We have retained without charge previous requirements under antiterrorism controls on aircraft destined to military end users and civil end users other than scheduled airlines and on other national security items over $7 million destined for military end users or end use. We have also retained our ability to review cases for aircraft for scheduled airlines and to stop any prospective sales when there is a significant risk of military use.

Libya has departed in major ways from international norms of behavior. Accordingly, subsequent to our annual review we significantly tightened controls on exports to Libya.

The extraordinary Libyan support for international terrorism and its efforts to destabilize its moderate neighbors continue unabated. The Libyans have shown blatant disregard for assurances they gave

us regarding the civilian end use of off-highway vehicles sold to them when they had these vehicles transformed into tank transporters. We believe that the violation of assurances calls for a strong response. In addition, the Libyans have used U.S.-origin aircraft to support military operations both in Uganda and Chad.

The President last week cut off U.S. imports of Libyan oil. He subjected to control all U.S. exports to Libya with the exception of food, agricultural commodities, medicine and medical supplies. Applications to sell to Libya national security items or oil and gas equipment and technology not available from non-U.S. sources will generally be denied.

These controls will supplement restrictions already in place on off-highway vehicles and aircraft. Our export control actions will avoid contributing through trade to resources for Qadhafi's adventures.

On December 29 the President expanded controls on the oil and gas equipment and technology for the Soviet Union. He also suspended issuance of all licenses on these goods for export to that country. On March 1 controls on exports to the Kama River truck plant were expanded to apply to Zil as well as to affect a broad range of equipment and technology for these plants. The new controls apply to the Soviet role in the Polish crisis.

Mr. Chairman, I have given you a short review of the status of our foreign export controls, particularly as they were affected by the February 26 extension of existing controls. Had that extension not taken place, all of the existing controls would have expired.

I will be happy to answer your questions.

[Mr. Johnston's prepared statement follows:]

PREPARED STATEMENT OF ERNEST JOHNSTON, JR.

Mr. Chairman, thank you for the opportunity to discuss with you the recent changes the Administration has introduced regarding foreign policy exports controls. As you know, when the Export Administration Act (EAA) of 1979 was adopted, the Congress included a provision which mandated after a year the end of foreign policy controls, unless they were extended by the President, and the extension, or any subsequent re-extension, could last no more than one year. This provision was included because of the Congressional view that foreign policy export controls were being imposed too sweepingly, with damage to U.S. trading interests. This requirement ensures that controls are periodically scrutinized to ensure that they are truly warranted and effective.

The EAA specifies a number of criteria which must be weighted in deciding on any extensions. These criteria include the probability that the extended controls would achieve the intended foreign policy purpose in the light of availability of goods from other countries; the compatibility of the controls with U.S. foreign policy objectives; the reaction of other countries to the controls; the likely effects of controls on the export performance of the United States and its competitive position; the ability of the United States to enforce the controls effectively; and the foreign policy consequences of not imposing the controls.

Foreign policy export controls were identified at the end of 1979 and renewed with minor adjustments at the end of 1980 and for a short period of two months at the end of 1981. This Administration, after having been in office for a year, felt that a more fundamental and critical review of existing controls was now in order to satisfy the criteria of the EAA. The repeal of the grains embargo in the spring of 1981 was also made with these criteria in mind. Our recent review produced a number of changes with respect to controls for human rights and anti-terrorism reasons and special controls affecting exports to South Africa, Libya, and the U.S.S.R. I would like to review with you each of the categories of foreign policy export controls.

VIETNAM, NORTH KOREA, KAMPUCHEA, AND CUBA

The review did not produce any changes in controls on exports to Vietnam, North Korea, Kampuchea and Cuba. Almost total trade embargoes are in effect except for gift parcels of items such as food, clothing and medicine and non-commercial exports to meet emergency needs. Since these export controls are an integral part of our overall policies toward these countries, the Administration did not believe that it would be in the U.S. foreign policy interest to redefine the export restrictions relating to any of these countries except as part of a general improvement of relations.

NUCLEAR NONPROLIFERATION

We have also made no changes in controls on exports which might contribute to the proliferation of nuclear weapons.

HUMAN RIGHTS

The rationale for human rights controls on the export of crime control and detection instruments and equipment is to distance the United States from governments with poor human rights records and to encourage improvements in the respect of human rights. There has been no change in U.S. policy concerning the importance of adherence to internationally recognized human rights. However, experience with human rights export controls over the past several years has shown that some items having little, if any, use for repression of human rights by law enforcement agencies were needlessly subject to a license requirement. We, therefore, have dropped such items from the crime control and detection equipment list. Examples include television cameras, color film, ultraviolet and infrared communication detection or tracking equipment (except for police model infrared viewers), and bullet and blast resistant garments. Items such as mobile crime laboratories, panoramic radio receivers, voice print equipment, polygraphs, fingerprinting equipment, psychological testing machines, handcuffs, police helmets, shotguns and shock batons remain on the list.

SOUTH AFRICA

The purposes of our export controls on shipments to South Africa are to support the United Nations Arms Embargo of South Africa, to distance ourselves from the practice of apartheid, and to promote racial justice in Southern Africa. In our review we concluded that some of the controls went beyond these objectives by restricting sales of goods with minor implications for apartheid or police or military functions.

The adjustments in the new regulations reduce restrictions on trade in the civil sector while maintaining a strong symbolic and practical separation of the United States from the enforcement of apartheid. Controls required to comply with the United Nations Arms Embargo as well as additional U.S. unilateral controls on items of significance for military or police functions are maintained.

The modifications eliminate controls on items clearly of no security significance and permit licensing on a case-by-case basis of other items under circumstances of little or no consequence to police or military functions. The previous controls prohibited the export of innocuous items not banned by other Western nations; they prevented the export of items largely to the private sector in South Africa if only a small portion of such items might ultimately be sold on the open market to the military and police; and they prevented export of parts and components to third countries if those exports would constitute even an insignificant portion of goods manufactured abroad and sold to the South African military and police. The new regulations allow the export of some items that would not contribute significantly to military or police functions and include de minimis provisions designed to limit other anomalous effects of the old regulations. Modifications have also been made in the regulations governing non-military aircraft and computer sales to South Africa. A validated license continues to be required, however, for the export of aircraft and helicopters and of computers for government agencies enforcing apartheid.

With respect to aircraft and helicopters, export licenses will now be subject to the condition that they may not be put to military, paramilitary, or police use. Under the old regulations, the importer was required to provide a written assur-

ance of that condition. This change eliminates a paperwork burden for the exporter and the U.S. Government and will be substantially as effective as reliance on a written assurance by the importer.

Finally, the computer control has been modified to be more precise. The licensing requirement will specify the five Government agencies primarily responsible for enforcing the apartheid system: The Departments of Cooperation and Development, Interior, Community Development, Justice, and Manpower.

ANTITERRORISM

The purpose of our antiterrorism controls is to underscore our strong opposition to governmental support for international terrorism. Controls are designed to insure that U.S. exports do not contribute to such support. Section 6(I) of the EAA requires that we maintain licensing controls on certain militarily significant items to countries the Secretary of State has designated as repeated supporters of acts of international terrorism. After careful review of available intelligence information the Secretary of State decided to no longer include Iraq among those countries considered to be repeated supporters of international terrorism, but to add Cuba. We continue to regard Libya, Syria and the People's Democratic Republic of Yemen as supporters of international terrorism.

In reaching our decision concerning Iraq, we took particular note of the fact that in 1981 Iraq continued the pattern of recent years of reducing assistance to individuals and groups which employ terrorist means. We have a significant interest in encouraging Iraq to take further steps in this direction. It is our belief that this change will support that objective as well as our broader goal of focussing punitive measures on countries which are today's greatest source of support for terrorist activities. Libya is such a source of support and we feel that it is important to draw a clear distinction between Iraq's improving record with respect to terrorism and Libya's intense and continuing involvement in international terrorist activities. I shall comment later in more detail on the Administration's recent actions with respect to Libya.

We very much hope our recognition of Iraq's improved performance and the addition of Cuba will demonstrate to other countries in the Middle East, including our many friends in the region, that our export controls truly reflect our concern for terrorist support. If Iraq were to reverse the encouraging trend of recent years, we would have to be prepared to reverse our recent action.

I should point out that shipments to the Iraqi military are not affected by our action. We are maintaining our policy of strict neutrality in the Iraq-Iran war. It is our policy not to establish a military supply relationship with Iraq or with Iran. All items which would significantly enhance the military capability of either side are denied.

I believe you are all aware of the reasons behind designating Cuba as a repeated supporter of acts of international terrorism. In the case of Cuba, we evaluated carefully the evidence of Cuban support for revolutionary violence and groups which use terrorism as a policy instrument. Cuban leaders have publicly asserted a right and a duty to provide such support. One example is the support Cuba has given to the M-19, a Colombian group which has repeatedly engaged in kidnappings, bombings, hostage-taking, and aircraft hijacking. This support caused Colombia to sever diplomatic relations with Cuba in 1981. Our conclusion was that Cuba clearly belongs in the category of states which have repeatedly provided support for acts of international terrorism.

Another modification in our foreign policy trade controls for 1982 is to exempt from our terrorism-related controls sales of civil aircraft for use by regularly scheduled airlines when we have received satisfactory assurances against military end use. The exemption would not apply to Libya or Cuba, which are subject to stricter controls. This change is consistent with our general position that foreign policy export controls must be used to further significantly our foreign policy goals. During the several years that anti-terrorism controls have been in effect, there has been no discernible link between the sale of civil aircraft to legitimate civil end users and acts of international terrorism. We therefore concluded that it is more appropriate to control the sales of civilian aircraft on national security rather than anti-terrorism grounds.

We have retained without change previous requirements under anti-terrorism controls on aircraft destined to military end-users and civil end-users other than scheduled airlines and on other national security items over $7 million

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destined for military end-users or end use. We have also retained our ability to review cases for aircraft for scheduled airlines and to stop any prospective sales for which there is a significant risk of military use.

LIBYA

Libya has departed in major ways from international norms of behavior. Accordingly, subsequent to our annual review, we significantly tightened controls on exports to Libya. The extraordinary Libyan support for international terrorism and its efforts to de-stabilize its moderate neighbors continue unabated. The Libyans have shown blatant disregard for assurances they gave us regarding the civilian end use of off-highway vehicles sold to them when they had these vehicles transformed into tank transporters. We believe that the violation of assurances calls for a strong response. In addition, the Libyans have not hesitated to use U.S. origin civil aircraft to support military operations both in Uganda and Chad.

The President, last week, in addition to cutting of U.S. imports of Libyan oil, subjected to control all U.S. exports to Libya with the exception of food, agricultural commodities, medicine and medical supplies. Applications to sell national security items to Libya or oil and gas equipment and technology not available from non-U.S. sources will generally be denied. These controls will supplement restrictions on off-highway vehicles and aircraft already in place. Our export control actions will avoid contributing through trade, to resources used for Qadhafi's adventures.

U.S.S.R.

On December 29, the President expanded controls on oil and gas equipment and technology for the Soviet Union to cover transmission and refining in addition to the 1978 controls on exploration and production. He also suspended issuance of all licenses on these goods for export to the U.S.S.R. On March 1, controls on exports to the Kama River Truck Plant were expanded to apply to Zil as well as to affect a broad range of equipment and technology for these plants. Controls on exports related to the 1980 Moscow Summer Olympics continue in effect.

The modified controls are compatible with other actions we have taken in response to the Soviet invasion of Afghanistan and to answer to the Soviet role in the current Polish crisis.

Mr. Chairman, I have given you a short review of the status of our foreign policy export controls, particularly as they were affected by the February 26 extension of existing controls. As I mentioned at the beginning, had that extension not taken place, all of the existing controls would have expired. I will be happy to answer any questions.

Senator BOSCHWITZ. Mr. DeCain, I see that you have some testimony.

STATEMENT OF VINCENT DeCAIN, ASSISTANT TO THE DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION

Mr. DECAIN. Yes, Mr. Chairman. The testimony that I have prepared for your benefit this morning is essentially the same as that which was just given by Deputy Assistant Secretary Johnston. I will therefore simply submit it for the record and will not read it.

[Mr. DeCain's prepared statement follows:]

PREPARED STATEMENT OF VINCENT DECAIN

Mr. Chairman, my name is Vincent DeCain. I am deputy to Bo Denysyk, the Deputy Assistant Secretary of Commerce for Export Administration for whom I am substituting this morning. Dr. Denysyk is out of the country, so I have the pleasure of addressing this subcommittee to discuss the foreign policy controls which became effective on March 1.

I understand that the subcommittee is especially interested in these controls as they relate to Iraq, Syria, and South Yemen. I will detail the substance of these, and of the more recent foreign policy controls imposed on Libya. However, I would like to begin my remarks with a summary of all the modifications and expansions made to previously-imposed foreign policy controls so that changes in regard to countries in the Near East can be discussed in context.

Foreign policy controls expire on December 31, unless extended by the Secretary of Commerce, under the authority granted him by the President, in consultation with the Secretary of State. However, due partly to the attention demanded by the events in Poland in late 1981 and the economic sanctions imposed upon the government of Poland and the U.S.S.R. in the form of economic sanctions in late December, last year foreign policy controls were extended until February 28, 1982. This was the first opportunity the Reagan Administration had had to reach its own determination regarding these foreign policy export controls. The extension permitted the Administration to conduct a deliberate and comprehensive review, especially in light of the situation in Eastern Europe.

Each issue was carefully studied and considered under the guidelines of the Export Administration Act of 1979. In particular, the Secretary of Commerce is bound by the Act to consider the following six criteria in any decision to impose or extend foreign policy controls:

1. The Secretary considers the possibility that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for control;

2. He also considers the compatibility of the proposed controls with the foreign policy of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

3. In addition, the Secretary takes into consideration the reaction of other countries to the imposition or expansion of such export controls by the United States;

4. The likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts is considered as well;

5. The Secretary considers the ability of the United States to enforce the proposed controls effectively; and

6. Finally, the Secretary considers the foreign policy consequences of not imposing controls.

The controls are imposed in consultation with and upon the recommendation of the Secretary of State, as being necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.

We received many public comments prior to enactment on March 1. The controls and accompanying regulations were issued in final-interim form, and the public has been invited to comment by April 30. We welcome the public's comments and those of the Congress, prior to establishing these controls in final form. Once final, they will be effective until January 20, 1983.

I would like to summarize the changes to existing controls which became effective on March 1.

Human rights controls remained essentially unchanged except for the modification which removed numerous dual-use items from coverage. U.S. exporters are now permitted to sell general purpose items readily available elsewhere to consignees in certain countries to which these sales had been often denied.

Controls on South Africa and Namibia have been changed to remove controls which were detrimental to U.S. business while having little, if any, impact on South African adherence to the repugnant practice of apartheid.

Control of exports to the U.S.S.R. have been expanded to cover a broader range of equipment for truck manufacture for the Kama and ZIL plants. This modification adds to the December 30 economic sanctions and are also designed to express U.S. displeasure with the Soviet role in events in Poland and Afghanistan.

Anti-terrorism controls were changed to delete Iraq from the list of countries which support international terrorism. The sale of certain non-military

aircraft to Syria and South Yemen will now be permitted, making U.S. aircraft producers more competitive in the world market.

With regard to your particular interest in the controls as they apply to Iraq, the Secretary of State determined that Iraq's improved record warrants removal from the list of countries covered by anti-terrorism controls. Syria, South Yemen, and Libya continue on that list, and Cuba has been added.

Therefore, although a validated export license is still required, for national security reasons, to export certain civil aircraft (valued over $3 million) and military end-use items (valued over $7 million) to Iraq, these items are no longer subject to foreign policy controls. This modification also removes the requirement for Congressional notification prior to the approval of licenses valued at $7 million or more.

Foreign policy controls no longer apply to civil aircraft exported to Syria and South Yemen if we are assured by the importer that they are to be used only by regularly scheduled airlines in those countries. However, the export of such aircraft still requires a validated license for national security reasons. We believe that such assurances will help in preventing military use of civil aircraft, although the principal deterrent is the desire of the importing country to continue to receive the benefits of peaceful trade with the United States.

If we have any indication that military use is intended, an export license will not be granted. If information were received indicating that a civil airline of these countries were using civil aircraft for military purposes, we would reexamine our export policy in regard to that country and would likely deny or revoke licenses to supply necessary spare parts. Intelligence information indicates that the regularly scheduled civil airlines of these countries have not participated in the diversion of civil aircraft to military use in the past.

Our concern with Syria's and South Yemen's support of international terrorism is no less strong than it has been in the past. Sales of civil aircraft to scheduled air carriers in these two countries continue to be controlled on national security grounds. However, for these two countries there is no evidence of a link between the sale of civil aircraft to legitimate end-users and international terrorism.

Just last week, the President announced a new stricter policy in regard to exports to Libya. In very general terms, effective March 12, everything going to Libya is subject to validated license control except the following: medicine and medical supplies; food and other agricultural commodities; non-strategic foreign-made products of technical data of U.S.-origin (i.e., products not appearing on the COCOM embargo list); and commodities which can be exported under general license to Country Group Z. That group consists of Cuba, North Korea, Kampuchea and Vietnam.

Export license applications generally will be denied for:

Strategic (i.e., COCOM-controlled) commodities exported after 12 March 1982;

Oil and gas equipment not readily available outside the U.S. The determination of availability will be made by the Department of Commerce's Office of Export Administration in the course of processing the license application. Exporters should submit any evidence they have of foreign availability with their applications.

Licensing policy is unchanged for off-highway wheel tractors, aircraft, avionics, aircraft and aircraft parts. These items were previously controlled under anti-terrorism and regional stability controls and there is no change in the licensing policy for them under the new regulations. As is the usual practice, when more than one type of control applies to a specific export, the strictest licensing standard will be applied.

The new regulations were designed to provide flexibility to permit favorable consideration of licenses for exports under existing contracts, and reexports of certain items which were abroad when the new regulations took effect.

My statement has highlighted the modifications made to the foreign policy controls by the Reagan Administration, with emphasis on those applying to countries in the near east. I will be glad to address your questions. Thank you.

Senator BOSCHWITZ. There are no differences between your testimonies? I am sorry, I received Secretary Johnston's testimony last night, but have not yet seen yours.

Mr. DeCain. No, sir. They are essentially the same.

Senator Boschwitz. I see.

[Pause.]

Senator Boschwitz. Do any of the other witnesses have statements that they wish to make at this time?

[No response.]

Senator Boschwitz. Mr. Johnston, on the first page of your testimony you say:

> These criteria include the probability that extended controls would achieve the intended foreign policy purpose in the light of availability of goods from other countries.

In other words, are you saying that we may as well sell them this material, inasmuch as others will?

Mr. Johnston. I am making a reference to the stipulation that is in the act, Senator. The criteria which are listed in the act say:

> When imposing, expanding or extending export controls under this section

and this is the foreign policy controls section—

> * * * the President shall consider: One, the probability that such controls will achieve the intended foreign policy purpose in the light of other factors, including the availability from other countries of the goods or technology proposed for such controls.

That is in section 6 of the act.

Senator Boschwitz. Mr. Johnston, I have a list of equipment. As you know, there is a $7 million limitation before the Fenwick amendment comes into play. Now, you say that we are not selling materials that are used in terrorism.

I notice on a list supplied by the Department of Commerce that we sold to Iraq last year radio transmitters and amplifiers, transmitting equipment with multichannel radio relay equipment, amplifiers and related equipment, frequency synthesizers—and I must say, I do not know what that is—aircraft, helicopters, transmission-reception equipment.

This is not material you would say that could be used in the pursuit of terrorist activities?

Mr. Johnston. Mr. Chairman, the antiterrorism controls have consisted essentially of security items over $7 million, aircraft over $3 million, and helicopters over 10,000 pounds.

Senator Boschwitz. This radio relay equipment, these amplifiers, these frequency synthesizers, microwave equipment, electronic assemblies and integrated circuits that we sold to the Iraqis last year, this is not equipment that would be used in the pursuit of terrorism, is that what you are maintaining?

Mr. Johnston. I will ask Mr. Root to answer that question.

Mr. Root. Mr. Chairman, these are items which for the most part are of general use and not directed toward military end users in Iraq. They are of small value, as I believe the information available to you will indicate.

These cases are reviewed individually on their merits and if there is any circumstance to suggest that there would be a significant contribution to military potential they would be denied, even though the controls for the moment do not call for denial under $7 million.

Senator BOSCHWITZ. Recording and reproducing equipment, roughly $2.5 million. This could not help terrorism? Measuring, calibrating, and testing equipment; it is hard to tell what that is. Radio relay equipment, $227,000. What about those?

Mr. ROOT. These are items which have general uses in the civil economy, Mr. Chairman. Under some circumstances they might be of military significance. But in these particular cases it was judged they would not.

Senator BOSCHWITZ. I will enter into the record at this point an editorial dated March 6 from the Des Moines Register, where it points out that virtually everything is used in the economy in one form or another and could be accepted under the statements that you just made. The article states:

> It is amazing that the Administration is satisfied by assurances from those it believes to be patrons of international bandits.

It goes on to point out that,

> The Administration, moreover, seems to have forgotten that U.S.-supplied Boeing 727's were used by Libya to ferry soldiers to Uganda to fight alongside the army of the infamous Idi Amin.

[The article referred to follows:]

[From the Des Moines Register, Mar. 6, 1982]

ANYTHING TO SELL PLANES?

The Reagan administration's war against international terrorism has taken a shot to the jaw—from the Reagan administration. The blow came in the form of a decision to allow U.S. manufacturers to sell civilian aircraft to Syria and South Yemen, two countries on an official U.S. list of nations that support international terrorism.

According to a letter sent to Congress by the Commerce Department, the sales will be allowed on the basis of Syrian and Yemeni "assurances" that the planes will not be put to military use.

It is amazing that the administration is satisfied by assurances from those it believes to be patrons of international bandits. Secretary of State Alexander Haig has repeatedly called South Yemen a "Soviet surrogate." And Syria's sponsorship of Palestinian guerrillas is well-known to the State Department.

The administration, moreover, seems to have forgotten that U.S.-supplied Boeing 727s were used by Libya to ferry soldiers to Uganda to fight alongside the army of the infamous Idi Amin.

American plane-makers are said to be under increasing competition from the European-made Airbus for sales to Arab nations. That reportedly was the chief factor behind the Commerce Department's decision. Is the quest for profits that sacred? Is it more important than the fight against terrorism? We don't think so, and we hope Congress doesn't, either.

Senator BOSCHWITZ. So certainly, while large airplanes perhaps would not necessarily be involved in the use of international terrorism, quite certainly they could promote the overall intentions of a nation that is involved in terrorism.

I do not understand, Mr. Johnston, what the repeal of the grain embargo has to do with this general subject you mention in your prepared statement.

Mr. JOHNSTON. I mention it, Mr. Chairman, because I think the repeal of the grain embargo is very closely tied in with the criteria which the act insists the administration take into account when it is making changes in its foreign policy export controls. There is a ques-

tion which this act says we should take into account, which is the effect on the American economy of existing foreign policy controls.

The act says that we should take into account the availability of goods from other sources and the effectiveness of controls that we have in place on the foreign policy objective that we are trying to carry out.

You mentioned the editorial from the Des Moines paper. One can carry that to the extent to say any item that goes into the civil economy could possibly be picked up by somebody for an illegal use. That could lead to the conclusion that we should embargo everything that we ship to that country.

But it seems to me that we have a responsibility to try to make a judgment in regard to the particular equipment, the person to whom the equipment is going, and to try to make a judgment on whether or not this good is going to be used for terrorist purposes.

Senator BOSCHWITZ. I suppose one could argue, as you point out, that grain sold to Russia or to a country could be used to feed terrorists and, therefore, in that way enhance terrorism. I think, however, that one has to make some reasonable distinction between these kinds of electronic assemblies and airplanes and grain.

Mr. JOHNSTON. May I make one more comment, Senator?

Senator BOSCHWITZ. Certainly.

Mr. JOHNSTON. You mentioned the fact that the Libyans had violated assurances that they had given to us. That is one of the reasons why we felt the intensification of controls was necessary in the Libyan case. When we get assurances from a country and find that they are not being carried out, then we feel that we have to act.

In the case of the Libyan planes, when we found out they were being misused, and likewise in regard to these off-road trucks, we then embargoed the shipment of spare parts. Now, so far as we know, we have never had any indication that any airplanes that have been sold to Iraq have been used for any terrorist purpose or for any military purpose.

Senator BOSCHWITZ. We sold some 727's and 747's to Iraq, as I recall; is that correct?

Mr. JOHNSTON. We sold some Boeing planes. I am sorry, I do not know which of them it was.

Mr. TWINAM. They were 747's and 727's.

Senator BOSCHWITZ. Some smaller ones too, I believe; is that correct?

Mr. TWINAM. Both types, 747's and 727's.

Senator BOSCHWITZ. Have they been delivered yet?

Mr. TWINAM. They have.

Senator BOSCHWITZ. Some of them or all of them?

Mr. TWINAM. I think they are either in the process or have been delivered.

Senator BOSCHWITZ. Mr. Johnston says that these planes have or have not been used?

Mr. JOHNSTON. Senator, back in the 1970's Iraq began to buy planes from the United States. There is no evidence that we have that any of the planes which were bought from the United States well before the 1979 act were used for military purposes.

Senator BOSCHWITZ. What kind of planes did they buy, Mr. Johnston? I am not familiar with that.

Mr. JOHNSTON. They were civil aircraft. I do not have a list of the Iraqi fleet, but the Iraqi civil aircraft fleet as I understand it is mainly made up of American planes.

Senator BOSCHWITZ. But certainly the planes that they seek to obtain now, transport types of planes, very easily could have and indeed do have a military application, which is somewhat different from the type of aircraft that you are talking about, that are used so commonly by airlines.

Let me say that I am waiting for Senator Tsongas to arrive.

At this time I will ask unanimous consent that the memorandum listing Iraqi-backed terrorist organizations, as taken from the Associated Press, the Jerusalem Domestic Service and other press reports given me here by Senator Pressler of a memorandum dated March 16, be inserted into the record at this point.

[The material referred to follows:]

[MEMORANDUM FROM THE AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, WASHINGTON, D.C., MARCH 16, 1982]

IRAQ AND INTERNATIONAL TERRORISM

On February 27, 1982, the Reagan Administration dropped Iraq from the government's list of countries providing support for international terrorism.

There is substantial proof, however, that Iraqi-sponsored terrorism continues and has not decreased over the past few years. The deletion of Iraq's name from the government's terrorist list signals a dangerous and unwarranted turning point in U.S.-Iraq relations and in Iraq's international status. Iraq will now be permitted to purchase American equipment which will enhance its capability to support international terrorism.

The international terrorist list

In 1979, the United States listed four regimes that repeatedly supported international terrorism: Iraq, Libya, South Yemen and Syria. Also in 1979, the Fenwick Amendment to the Export Administration Act mandated: Should a sale of equipment with a potential military use be proposed to any country on the terrorist list, a special license from the Commerce Department must be issued.

Iraq, now off the terrorist list and absolved of the Fenwick provision, will be permitted to purchase civilian aircraft from the United States—aircraft which can easily be converted to military use.

Deletion of Iraq from the terrorist list is a major step backwards in the Administration's proclaimed war on international terrorism.

In a televised address on September 19, 1980, Ronald Reagan stated, "I will direct the resources of my Administration against this scourge of civilization and toward expansion of our cooperation with other nations in combating terrorism in its many forms." In his first news conference as Secretary of State, Alexander Haig stated, "International terrorism will take the place of human rights in our concern because it is the ultimate abuse of human rights."

In removing Iraq's name from this list *without positive proof* of Iraq's inculpability, the United States is wiping clean Iraq's slate and sanctioning—albeit implicitly—Iraqi involvement in international terrorism.

The evidence

Since the Ba'ath Party seized power in Iraq in 1963, aid to terrorist organizations has been part of the country's official policy. The Iraqi government supports politically and monetarily the following terror-organizations: the "Arab Organization of the 15th of May," the "Arab Liberation Front" and the "Palestine Liberation Front." Until 1980, a PLO faction led by Abu Nidal was headquartered in Baghdad. Although Abu Nidal moved to Damascus in 1980, Syrian President Assad recently claimed, "his [Abu Nidal's] primary center and leadership is in Iraq." (December 13, 1981, *An-Nahda Magazine*)

IRAQI-BACKED TERRORIST ORGANIZATIONS

May 15th Movement

Associated Press, March 2, 1982.—"The [Israeli] intelligence chief [Gen Yehoshua Seguy] said Iraq supported a 'May 15' terror group that had carried out a string of bombings at El Al offices in Europe, the bombing last August of Israel's embassy in Vienna and Israel's diplomatic mission in Athens, and the time-bombing of a passenger ship bound for Israel last December 20. . . . Iraq, he said, trains terrorists from all around the world, and the effort is supported by the Ba'ath Party."

Jerusalem Domestic Service, March 2, 1982.—"Head of the intelligence branch in the general staff, Maj. Gen. Yehoshu'a Saguy, is disclosing this evening that Israel has good reason to believe that the sabotage perpetrated against the vessel Orion was the responsibility of the 15 May Organization . . . Major General Saguy said that Iraq is actively encouraging the terrorists, and during the last year it even doubled its efforts."

Associated Press, January 17, 1982.—"An anonymous caller to the Beirut office of the Reuters news agency said the Friday night explosion at the Mifgash-Israel restaurant (in West Berlin) was the work of the "15th of May Arab Organization for the Liberation of Palestine . . . *L'Orient le Jour* said the 15th of May Organization had claimed responsibility for an attack against Israel's El Al airline offices in Istanbul, Turkey."

[NOTE: "Credit" for the 15th of May terrorist acts have been broadcast over Radio Baghdad's *Voice of the Masses.*]

PALESTINE LIBERATION FRONT (PLF) AND ARAB LIBERATION FRONT (ALF)

Associated Press, October 12, 1981.—"Today the PLO is an umbrella organization for eight separate guerrilla factions. Here is a brief look at them:

Palestine Liberation Front (PLF).—split from the PFLP-GC (Popular Front for the Liberation of Palestine-General Command) in 1976. Headed by Abul Abbas and funded by Iraq, it is considered the weakest, but most violent of the factions.

Arab Liberation Front (ALF).—*founded in 1969 by* Iraq's Baathist government. Its leader is Abdul Rahim Mohammed."

The Washington Post, June 11, 1981.—" 'Rejectionist Front' Palestinian guerrilla groups backed by Iraq include the Arab Liberation Front, established by the Iraqi Ba'ath Party in 1969, the Popular Palestinian Struggle Front, and the Palestinian Liberation Front."

Foreign Report.—"Through other factions within the umbrella organization of the PLO, Arafat has close contacts with Syria's enemies in the Arab world—Jordan and Iraq."

Associated Press, December 7, 1981.—"Two gunmen shot and killed a former Palestinian guerrilla leader with strong Iraqi ties today, Beirut police said . . . The victim identified as Abdul Wahhab Kayali, former member of the Pan-Arab Command of Iraq's ruling Socialist Party and former head of the Iraqi-financed Arab Liberation Front, one of the eight guerrilla groups that form the Palestine Liberation Organization."

RECENT ATTACKS BY THE AFL AND PLF

Associated Press, April 8, 1980.—Reporting on the terrorist attacks on a nursery on Kibbutz Misgav Am, AP wrote, "The Iraqi-supported Arab Liberation Front, one of the radical guerrilla groups in the Palestine Liberation Organization, claimed responsibility for the raid."

Associated Press, April 16, 1981.—"Israeli anti-aircraft gunners shot down a hot-air balloon carrying two Palestinian guerrillas on a cross-border raid into Israel today, the Israeli military command said . . . In Beirut, the Palestinian Liberation Front, a small guerrilla group in the radical wing of Yasser Arafat's Palestinian Liberation Organization, claimed responsibility for the infiltration . . ."

ABU NIDAL'S FACTION

Associated Press, September 14, 1981.—"Between the months of May and August, Abu Nidal has been linked to several guerrilla actions in Europe, including attacks on two PLO representatives, and more recently the synagogue attack in Vienna which killed two people."

An-Nahda (Kuwait), December 13, 1981.—Excerpt from an interview with Syrian President Hafez Assad: "As for Abu Nidal, I do not know him personally. As is known, his primary center and leadership are in Iraq."

Washington Post, August 6, 1978.—"For years the Iraqi government has given the cold shoulder to Palestine Liberation Organization leader Yasser Arafat and his Fatah guerrilla group. Instead, Baghdad has chosen to back the break-away groups of Dr. George Habash and the late Wadi Haddad, who masterminded the most spectacular terrorist attacks and airline hijackings of the early 1970's."

". . . as long as Baghdad continues to maintain its relationship with Abu Nidal—a connection the terrorist describes as a "close alliance"—Iraq's protestations that it does not support terrorism will ring thin."

Associated Press, August 3, 1978.—"The renegade Fatah leader Sabry Banna, better known by his code name Abu Nidal "Father of the Struggle", defected to Bagdad after a Fatah guerrilla court found him guilty of plotting to assassinate Arafat in 1974. . . . Abu Nidal set up one of the most efficient terror networks in the Arab world, relying heavily on Iraqi subsidies . . . Iraq is known to have used Abu Nidal to stage a series of terror operations in neighboring Syria and Jordan, including hostage-taking attacks on Semiris Hotel in Damascus and the Intercontinental Hotel in Amman in 1976 . . . Abu Nidal claimed responsibility for an abortive attempt to assassinate Syrian Foreign Minister Abdul Halim Khaddam near Damascus a year later."

The Economist.—"The movement called Fatah, the largest and in some ways most sophisticated component of the Palestine Liberation Organization, has finally decided to take on the Iraqi-supported groups of renegade Fatah members led by Abu Nidal."

IRAQI-EMBASSIES IN THE WEST FUNCTION AS TERRORIST BASES

Jerusalem Post, September 16, 1979.—"The first issue of Britain's new weekly news magazine "Now" charges that Iraqi embassies throughout the West serve as Palestinian terror bases. . . . Iraqi embassies in the West, including London, have been turned into operational bases for the most fanatical of the Palestinian terrorist groups and for hit men despatched from Baghdad to pursue bloody Arab vendettas in Europe."

Reuters, March 3, 1982.—"An Israeli spokesman said, Iraq is directly involved in terror operations in the Near East and beyond, and not the least of which is serving as a shelter for terrorists, with its foreign embassies turned into warehouses and into bases for the export of terror. Iraqi intelligence has made contacts abroad with various underground movements throughout the world, such as the Irish Republican Army which it even supports monetarily!"

The Union Leader, March 9, 1982.—"In 1979 and 1980 Iraqi diplomats were arrested and deported from Western Europe for carrying bombs with orders to attack Iraqi dissidents; Iraqi diplomats were involved in plots to overthrow foreign governments; the Iraqi ambassador to Khartoum was expelled from Sudan in an attempt on Sudanese President Numeiri. Iraq supports terrorism in Africa, Asia and Latin America."

IRAQ PROVIDES MONETARY SUPPORT TO TERRORIST ORGANIZATIONS

The Washington Post, November 6, 1978.—"Arab leader at a summit conference here (Iraq) secretly approved a 10 year $3.5 billion annual war chest yesterday to strengthen the remaining front line Arabs now that Egypt appears ready to sign a peace treaty with Israel . . . Conference sources provided the following breakdown for the recipients: The PLO, $400 million . . . Pledging the funds were Saudi Arabia, $1 million and Iraq and Libya $500 million each."

Baghdad Iraqi News Agency, January 10, 1980.—"On January 1, 1980, Iraq paid the first installment of its 1980 aid to Syria, Jordan and the PLO. The aid amounts to $172,333,232 in implementation of the Baghdad summit's resolutions . . . The Minister of Finance added that Iraq also transferred the sum of $7,429,066 to the PLO."

Christian Science Monitor, April 8, 1980.—"The ALF, which competes for supporters in south Lebanon with Mr. Arafat's Al Fatah organization, is the recipient of plentiful Iraqi funds, which go to buy the newest arms and communications equipment for its fighters there. . ."

IRAQI LEADERS MEET WITH TERRORIST LEADERS

Reuters, November 11, 1981.—"Palestinian leader Yasser Arafat arrived in Baghdad at dawn today for an official visit lasting several days, the official Iraqi news agency reported."

Iraqi News Agency, August 13, 1981.—"Hani al-Hasan, political adviser to the Chairman of the PLO Executive Committee, Yasser Arafat, left Baghdad today after conveying an oral message from Arafat to President Saddam Husayan. Hasan praises the Iraq leadership's principled position on the Palestine issue and the *financial aid* Iraq was extending to the Palestine Revolution."

UPI, November 22, 1980.—"PLO chief Yasser Arafat arrived in Baghdad Saturday . . . Arafat was received by Naim Haddad, a leader of the Iraqi Ba'ath party. . ."

Associated Press, March 30, 1979.—"A meeting of the PLO and the ruling Iraqi Ba'ath Party late Thursday went one step farther and said any regime supporting of giving any type of material or moral support to Sadat . . . should be toppled."

Senator BOSCHWITZ. Let me see where Senator Tsongas is before we go into a closed session. Senator Tsongas wants to proceed in open session. I think to usefully pursue the matter of the terrorism of Iraq and to make fruitful comparisons between that terrorism as it now exists and as it did exist, we must pursue that in closed session. But Senator Tsongas wishes to bring to your attention some of his views with respect to South Africa and wishes to do that in open session.

So if you will let us pause for a moment we will find out where he is.

[Pause.]

Senator BOSCHWITZ. Mr. Johnston, while we are waiting for Senator Tsongas, perhaps we can ask you to detail some of the changes for the public record that you have perceived in the Iraqi record that would justify this change in our attitude.

Mr. JOHNSTON. Mr. Chairman, in 1981 Iraq continued the pattern of recent years of reducing its assistance to individuals and groups which employ terrorism. This trend consisted of a reduction or termination of financial and other forms of support for certain Palestinian and other radical factions.

Iraq has also reduced its relations with non-Arab extremist groups which employ terrorism. It also has involved the movement or expulsion of some of these factions out of Iraq. This has been particularly evident in the case of groups which sought to undermine more conservative Arab regimes and has paralleled Baghdad's move toward closer relations with its moderate Arab neighbors and the West in recent years.

As I indicated in the testimony, we have a major interest in encouraging Iraq to take further steps in this direction. I am sorry that I cannot be more specific in discussing this information, because of its classified nature, but we certainly are willing to provide more details in executive session.

Senator BOSCHWITZ. Is there any reason to believe that the activities of the Iraqis have been motivated by something other than their present situation, their conflict with Iran?

Mr. JOHNSTON. Mr. Chairman, this movement in which Iraq has been engaged predates the beginning of that war. It really ties in with

the effort that Iraq has been making in recent years to get closer to some of its more moderate neighbors.

Joe, do you want to say any more than that?

Senator BOSCHWITZ. You are quite right that we cannot review in public session the changes that have occurred since the beginning of that war, which is now 18 or 19 months old. But the changes to the best of my knowledge that occurred prior to that time are not significant.

Is there any reason for you to believe that in the event the Iraqis terminate their war with the Iranians and that the situation returns to a situation similar to the one that existed before the war, that the terrorism that they employed prior to that time would not be once again utilized?

Is there any difference in the objectives of the Iraqi Government with respect to the use of terrorism that you can detail in open session?

Mr. JOHNSTON. Mr. Chairman, we do not have any guarantee, of course——

Senator BOSCHWITZ. I did not talk about a guarantee.

Mr. JOHNSTON. What Iraq's behavior will be in the year ahead. We think what has gone on so far is a positive development and we want to reinforce it. As I said, the trend developed before the conflict and had to do with the improvement that Iraq was trying to make with its moderate neighbors.

We think if there is a peace settlement the terrorist activities with which Iraq has been involved with regard to Iranians would probably decline. I think that Iraq has a very strong interest in its role in the nonalined movement, where they are expecting to take a chairmanship. I believe the conference is supposed to take place at Baghdad later this year.

Mr. TWINAM. Mr. Chairman, might I add to that? I think what we do detect is, starting with Soviet activities in Afghanistan, the coup in Afghanistan, and then the invasion, one sees what may be a very fundamental reorientation of Iraqi policy and patterns. This was influenced also by the Iranian revolution, there is no question about that.

The growing relationship with the more moderate Arab countries hopefully will be a restraint on the future conduct of Iraq in this area as well as others, with no guarantees.

Senator BOSCHWITZ. Secretary Twinam, as you know, the relationship with the so-called more moderate neighbors of Iraq has involved some very, very large cash payments and help in this war with Iran. Most of the motivation that I have seen and reports that I have read probably are traceable to that.

Would you agree with Mr. Johnston's statement that there was a significant change in the attitude and actions of the Iraqis prior to the outbreak of this war in their support of terrorist groups in other parts of the world?

Mr. TWINAM. In terms of a general orientation of policy, yes.

Senator BOSCHWITZ. What does that mean?

Mr. TWINAM. And in the last year in particular.

Senator BOSCHWITZ. General orientation of policy, what does that mean?

Mr. TWINAM. A more pragmatic, less ideological stance on a number of international and regional issues, and a rapproachment with the moderate governments, Jordan and the Gulf governments. In our discussions with those governments, they felt well before the war that this was a quite significant and important trend.

Senator BOSCHWITZ. Have you seen any reports from any of the security agencies that would support that conclusion?

Mr. TWINAM. In terms of the general policy orientation?

Senator BOSCHWITZ. That, Mr. Twinam, is too easy, "a general policy orientation." That is too general a statement.

Is there any evidence, any concrete evidence, that the Iraqis had a change of view 19 months ago, prior to the beginning of the Iranian and Iraqi conflict, which they thought would be a short one and which the people here in Washington from all departments thought would be a short war and now 19 months later still goes on—rather than a general policy orientation? Is there any specific type of evidence that would lead one to believe that there was a change in the Iraqi terrorism intentions prior to the outbreak of that war?

Mr. TWINAM. I believe, Mr. Chairman, we could discuss this more fully in executive session. I think the Government of Iraq would contend, in terms of intent, that it does not support international terrorism, a proposition with which we do not agree.

Senator BOSCHWITZ. Mr. Johnston, I believe you have been handed a Congressional Research Service paper by the Library of Congress that details several attacks made in 1980 and 1981. I wonder if you would discuss those.

Mr. JOHNSTON. I do not think there is anything I can say in open session on this, Mr. Chairman. But I think we can comment on it in closed session.

Senator BOSCHWITZ. You cannot comment on the attacks that were made on the kibbutz, on a chemical warehouse, on an attempted assassination of the Israel Defense Minister? You do not wish to comment on them in open session?

Mr. JOHNSTON. No, sir.

Senator BOSCHWITZ. I understand Senator Tsongas is pretty close by.

Let me say that we have some difficulty in understanding why the Department of Commerce felt it must rush, without consultation with the Foreign Relations Committee, and why they could not do it in a more normal and deliberate fashion.

Mr. DECAIN. Mr. Chairman, I believe that the process of consultation which was initiated was one which was intended certainly to meet the spirit of the law, if not the letter.

In the first instance, the appropriate committee of the House was contacted, the House Foreign Affairs Committee. The Senate Banking Committee was also contacted here in the Senate. And I believe at that time an invitation was extended to the Senate Foreign Relations Committee.

Senator BOSCHWITZ. You believe incorrectly.

Mr. DECAIN. Subsequently, I understand——

Senator BOSCHWITZ. We became aware through staff of the House communicating with staff on the Senate Foreign Relations Committee.

I am not aware of any invitations having been issued to any member of the Senate Foreign Relations Committee.

Mr. JOHNSTON. Mr. Chairman, I think on the 24th of February—and I think that is the correct date, the 24th, perhaps the 25th of February—we had a briefing of the staff of the Senate Banking Committee, and I think there was a member of the staff of the Senate Foreign Relations Committee present at the time.

We said at that time that we will be happy to have consultations with members. Unfortunately, we were not able to arrange them at that time.

Mr. DECAIN. I believe it was one of Senator Dodd's staff who attended that meeting.

Senator BOSCHWITZ. We believe the only contact that we had was quite by accident. My staff man, I think, learned about the decisions Wednesday night, a day and a half before the event, but that is not consultation.

Even the February 26 date was the last working day before the implementation of the regulations. We do not have a veto process in the Senate or in the Congress. We just have an informational process. Certainly we are jealous of our prerogatives, and certainly you can understand that this is a sensitive area.

It simply befuddles us why the notification, if any, was done just on the periphery at best and not in a more regular manner. We may not have taken a different attitude with respect to it if it had been done in a so-called more regular manner, but nevertheless at best one has to stretch to say that there was consultation.

Mr. DECAIN. Mr. Chairman, certainly there was no intention to avoid the consultative responsibility that we have. I might add, just for purposes of communication, that our rule is an interim final rule. Frankly, we appreciate the opportunity to receive your views today, however late they may be in this process.

But nevertheless, whatever views come out of this will be considered in the review of the final rule, which will be issued some 60 days later.

Senator BOSCHWITZ. Mr. DeCain, you are the deputy to the Deputy Assistant Secretary. Clearly, the rule now is in effect.

Mr. DECAIN. Yes, but it is in effect on a pending interim basis. We want to receive comments which could affect the final outcome of the rule. Therefore, any comments that we receive today and subsequently will be considered in the adoption of the final rule.

Senator BOSCHWITZ. It does not inspire us with great confidence that you tell us that our views, even though they are late, as you just mentioned, will be considered. And it does not inspire us with much confidence that we have to ask that our views be considered, rather than the fact that you come to us openly, or that we hear about it a day or two prior to the implementation of the rule.

Senator Tsongas, do you wish to question these witnesses?

Senator TSONGAS. Thank you, Mr. Chairman.

I apologize for being late and I will not be so presumptuous as to make the witnesses repeat their statements. I have just a couple of comments and I will go back and read the testimony, so as not to put everybody through this once more. Let me ask a couple of questions.

First, where did this initiative for change originate?

Mr. JOHNSTON. The initiative for the review comes from the Congress. These controls expire at the end of every year if the President does not renew them. The Congress felt that the previous administration had been using export controls too widely and so in essence the Congress put into effect a rule which said these things are going to expire unless you put them into effect again, and when you renew those controls we expect you to find out how they are working, compare them with the criteria in the act, which have to do with their effectiveness, and consider whether they are accomplishing what they are supposed to accomplish.

That is the process that we went through.

Senator TSONGAS. Who was the reviewer?

Mr. JOHNSTON. The review was essentially conducted by the Department of State and the Department of Commerce, and the decisions were made by the Secretary of State and the Secretary of Commerce.

Senator TSONGAS. So it was reviewed and OK'd at the Secretary level?

Mr. JOHNSTON. Right.

Senator TSONGAS. As you know, there is a dispute as to whether indeed these items have military application. Has this already been discussed?

Mr. JOHNSTON. We have not discussed the South African controls at all, except in the statement.

Senator TSONGAS. There are those who are more expert than I who feel that some of the equipment that is now available can indeed be used for military purposes. Do I take it that you would disagree with that?

Mr. JOHNSTON. In the case of items going to the South African military and police, which I think is what we are concentrating on, where we think these are being used for basic military purposes, then we would deny those licenses. But we found that we were catching in our controls a large number of items which really were not essential military items.

Senator TSONGAS. That may well be the case. I am not arguing that they all are. But I think the concern is the environment in which this takes place. As you know, you now have the death of a white opposition leader in South Africa, you have the remarkably Soviet-like approach of putting people into psychiatric wards if they are in disagreement with the administration. You have the recent recurring invasion into Angola.

I guess the question is whether this kind of policy judgment on export controls can be legitimately argued to be somehow ultra vires these other issues. I take it your argument is this was decided separately, without consideration given to other policy questions, and it was strictly on a technical implementation of the act; is that correct?

Mr. JOHNSTON. I did not mean to imply that this represents any change toward the U.S. view of South Africa. What I did mean to say is in making the judgments on which controls ought to be extended we tried to take account of which items were indeed the kinds of items that would be used by the South African military or police and which would be repressive of human rights.

I have a list here of the foreign policy control changes that we submitted to the Congress on the 26th of February which will demonstrate

what we eliminated. We said that a license is required for all items going to the military police except certain items. The exceptions included food, nonmilitary clothing, items used for personal hygiene, chemicals, and general industrial equipment of no national security concern, word processors, personal computers, hand-held stand-alone calculators, certain other business machines, and items that may, even under our embargo, be shipped to Cuba, Vietnam, North Korea, and Kampuchea. This is a very limited series of goods such as those destined for official Americans or charity kinds of shipments. Those are the items which are the exceptions to the license requirement for the military and police.

Then we say that the licensing policy on items which require licenses for the military and the police will be denied on a case by case basis, except for items not controlled for national security reasons which would not contribute significantly to military or police functions, medicines, medical supplies and medical equipment, commodities and technical data to be used to stop aircraft hijacking, word processors, personal computers, foreign origin equipment incorporating 20 percent or less by value of U.S. origin components, and reexports or sales of insubstantial portions of commodities or technical data exported originally to parties other than the South African military or police, and sales of insubstantial portions of the South African produced product of U.S. origin technical data, provided this does not contribute significantly to military or police functions.

We found that we were catching a large number of items. For example, there had been an application for a technology to produce tires in South Africa. Now, those tires could have been bought by the South African military and police, although the purpose of the tire factory would have been to make tires for the general economy. We thought that that was going further than we should be going in these controls.

Senator TSONGAS. Let me give you an example. There has been a request for licenses from Beech and Piper for six twin-engine turboprops. How would you view that application?

Mr. JOHNSTON. These are the ambulances, I think. We will look at those. I think that there is a predisposition toward licensing them. If there is an airplane that has been put together as an ambulance, to refit it to be other than an ambulance becomes a very expensive proposition.

Senator TSONGAS. What if the aircraft were to go into Angola and bring back troops wounded during an incursion into Angola? Is that beyond the pale of expectation?

Mr. JOHNSTON. I suppose that is possible, but our feeling is this is something which is used for hospitalization and medical treatment, and that would be the prime consideration.

Senator TSONGAS. Well, just put yourself in their situation. Here you have these airplanes that are in essence med-evac type equipment. You take people who have been hurt and you rush them to hospital facilities. Obviously, that would include someone hurt in an automobile accident or people in other emergencies.

But where do you think the greatest need would be right now, given what is happening in the incursion in Angola? To get people evacuated from where they are to a hospital facility? Would not the

Angolan action give you some reason to believe that if you were in their shoes, that is exactly where you would use the aircraft?

Mr. JOHNSTON. Senator, I do not know exactly where they would use all of these ambulances. If that is the only activity that they engage in right now——

Senator TSONGAS. Do you not think it is your duty to find out?

Mr. JOHNSTON. I think, Senator, what we are trying to do is to have a consistent policy that would allow us to tell American exporters what they can sell and what they cannot sell. That is what we are trying to do in this revision of the export licenses.

Senator TSONGAS. If it turns out that the buyer of the planes was the military, how would you react to that?

Mr. ROOT. Senator, in the case to which you refer I believe the buyer would be the military. We emphasize that there has been no action on this. But if it were to be approved it would be on the basis of a humanitarian end use or a medical end use.

The act itself in section 6(f) suggests that our bent should be toward approval of medical items.

Senator TSONGAS. I think it is obvious if you are going to engage in war someone is going to get hurt. If someone is going to get hurt you have to get him out and get him to a hospital. To the extent you increase their capability for evacuation, you increase their military capability. That is pretty obvious on its face.

Would you be surprised if these planes were used to get South African troops out of Angola and to the hospitals of South Africa?

Mr. ROOT. If indeed there were such an operation—that might of course occur—there would be a clear policy of denial for any aircraft for any offensive military purpose. This of course would not be such a purpose.

Senator TSONGAS. Part of the capacity to have an offensive capability is to have a capacity to get your people out when they are hurt, would you not agree?

Mr. ROOT. That would not be my definition of an offensive military purpose.

Senator TSONGAS. I suppose if you were a soldier in South Africa and you knew the government had these planes to get you back if you were hurt, you would have a much more positive attitude going into Angola than you would if the country did not have those planes.

Mr. JOHNSTON. That is true also for medicines, is it not, Senator?

Senator TSONGAS. Obviously.

Mr. JOHNSTON. I think under the act we are not allowed to stop the shipment of medicines.

Senator TSONGAS. Well, regarding these airplanes, in addition to having evacuation capabilities, they are exactly the kind of airplane you would use if you wanted to have intelligence collection.

Mr. JOHNSTON. As I said, if somebody wants to buy an airplane which is called an ambulance and use it for other purposes, he is taking on a mighty expensive proposition.

Senator TSONGAS. It does not mean they are not going to do it.

Mr. JOHNSTON. No. But if that is what they want, it is also possible for them to get this equipment from countries other than the United States.

Senator TSONGAS. Well, obviously I am not going to convince you and I know you are not going to convince me. Since you people are going to make the decision at the highest levels, let me as a matter of policy suggest this: When the administration allowed Bob Jones University to have a tax exempt status, I think the concern was that even though statements were made that we are not for racism, segregation, and so forth, it was viewed, however nicely we can cut the corners, as, in essence, a nod in the direction of segregation. That is how it has been interpreted.

It certainly had that political effect around the country. I do not think we can argue that. Given what has happened in South Africa, the concern is this in effect becomes a message. If the message is pursuit of constructive engagement a la Secretary Crocker, and it results in the resolution of Namibia, I suppose there are those of us who would be willing to pay that price.

However, if it is a statement of constructive engagement that in essence provides approval for what is now going on internally with the arrests and so forth, then I guess I have some questions about it. The issue is not so much whether you or I score points, because obviously much of what you say has merit. It is how this is interpreted in black Africa and within the ruling structure of South Africa. And my guess is, especially with Mr. DeKieffer down there, the message is rather clear.

Mr. JOHNSTON. Senator, it seems to me that brings up one of the fundamental problems we have so far as foreign policy controls are concerned. The fact is they are, in part, symbolic. Once you have taken one of these acts, if you modify what you have done, people can say it is a symbol, that you mean that you are less concerned than you were before.

It is exactly for that reason that the Congress adopted by the 1979 act, insisting that these controls be stopped at the end of the year and outlining the considerations that would be taken into account so that there would be something other than the symbolic possibility which would be considered. If symbolism is the ruling thing, then once you put a control into effect, no matter what its effect is, you are stuck with it.

Senator TSONGAS. I agree you are on the horns of a dilemma. It is like not recognizing Angola. If you think of all the countries that are to the violent left, I do not think you would consider taking off those controls, or so I would imagine.

For example, we are going through the same argument now with the Kama River. Remember, you have been through that with the truck plant in the Soviet Union. We had the same arguments with the grain embargo.

You are quite correct. You end up in a situation where you are caught between various symbols and which in essence is the most important? Granted your comment with which I am in accord, the problem is that is the world in which one lives. And if we are going to use symbols on one side we should use symbols on the other side as well.

I am not suggesting that your job is easy. I would not want to be in your shoes at this point because no matter what you do we are going

to get criticized. But I think one should be aware of how things are interpreted and that there is not any neat or clean resolution of it.

Thank you, Mr. Chairman.

Senator BOSCHWITZ. At this time, Senator, I move that we go into a closed session and that the room be cleared of those people who do not have at least a top secret clearance.

Before we recess to go into executive session, I ask unanimous consent that some questions which Senator Percy has for the Department of Commerce and the Department of State be submitted for the record and responded to in writing.

[Additional questions and answers follow:]

STATE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR PERCY

Question 1. What guarantees of end-use does the United States have for computers it has sold and may be about to sell to the Republic of South Africa?

Answer. License applicants specify the end uses of the computer on the license application. In addition, an end-use statement signed by the consignee must accompany all computer applications to private consignees in South Africa and to government consignees specified in Part 375.2(b)(3)(ii) of the Export Administration Regulations. For certain computers and end-users we may also request a non-nuclear weapons end use or a non-military end use assurance from either the South African Government or the end user. Were we to find that the computer was being used for purposes other than those stated on the application, spare parts and servicing of that computer would be denied. The South Africans wish a stable relationship with U.S. suppliers. Accordingly, U.S. computers are unlikely to be diverted to an unauthorized end use. Moreover, for end-uses which the United States would not approve, they can obtain similar computers from foreign sources, especially the Japanese.

Question 2. Will any on-site inspections to assure civilian end-use be unannounced? What technical qualifications will the inspectors have to conduct such inspections?

Answer. Unannounced inspections are unlikely since access to many of the facilities is controlled. Embassy personnel with some general knowledge of computer operations will participate in the inspections. In addition, an attempt will be made to plan inspections to coincide with visits of technically trained personnel from the United States. Company representatives with in-depth knowledge of the computer system may also participate in inspections.

Question 3. Please compare the capability of the Cyber 170/750 to a Control Data Corporation 7600, which is commonly regarded as the standard computer used for the design of nuclear weapons?

Answer. The Processing Data Rate (the product of the average number of bits transferred per instruction and the processing rate) of the Cyber 170/750 is 408 and of the 7600 is 723.

[Questions 4 and 5 are business confidential and are retained in committee files.]

Question 6. What role does the Department of State play in the approval of export applications for sophisticated computers? What technical qualifications do the personnel have who are assigned to these roles?

Answer. The Department of State reviews applications to export computers to South Africa which are subject to foreign policy export controls, including nuclear non-proliferation. State review concentrates on the foreign policy implications of the proposed export. Questions concerning the technical performance capabilities of the equipment are referred to appropriate agencies, including the Departments of Energy and Commerce. State chairs the Subgroup on Nuclear Export Coordination which considers nuclear-related exports, including computers. Members of that group represent Commerce, Defense, Energy, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission.

Question 7. What procedures are there for notification to Congress of pending applications for export of sophisticated computers?

Answer. To our knowledge, there are no such procedures.

[Question 8 is business confidential and is retained in committee files.]

Question 9. Do controls of computer exports to South Africa differ from those applied to sales to any other country?

Answer. Computers are controlled to South Africa for national security, nuclear non-proliferation, and foreign policy purposes. The part of the controls which is unique to South Africa concerns exports to police and military entities and to five other South African Government entities believed to be most responsible for the administration and enforcement of apartheid; namely, the Departments of Justice, Interior, Manpower, Cooperation and Development, and Community Development. Computers which will be used to enforce apartheid will not be approved to these entities.

STATE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR BOSCHWITZ

Question 1. Do you agree that the removal of Iraq from the list of countries supporting international terrorism, as well as the modifications regarding Syria, South Yemen and South Africa, have important foreign policy implications? If so, what are they?

Answer. The changes with respect to the foreign policy controls which were announced on February 26 resulted from our review, as mandated in the law, to ensure the compatability of the controls with U.S. foreign policy objectives. They do not represent a change of policy as regards this Administration's commitment to human rights, the promotion of racial justice in Southern Africa, or our strong opposition to governmental support for international terrorism.

Question 2. On February 24, staff of the Senate Banking Committee was briefed on proposed modifications in the Export Administration Act regulations. Apparently, no formal offer was made to brief the members or staff of the Senate Foreign Relations Committee in a similar fashion. Only after inquiries were made by a member of the SFRC staff was an offer made to brief members of the Committee—and this was a day before the new regulations were sent to Congress on February 26.

Given the history of the concern and interest of the SFRC Committee in matters concerning international terrorism, why wasn't the Committee contacted at an earlier stage in the process, when consultations could have been meaningful, instead of literally at the 11th hour?

Answer. The decision to modify the Export Administration Act regulations on March 1 was not taken until the end of the day of February 22. We began our briefings with the committees on formal jurisdiction, starting with the House Foreign Affairs Committee, Staff and Members, on February 23. This was followed by private classified briefings for three interested Members. On the Senate side, the Banking, Housing and Urban Affairs Committee has official jurisdiction and, as noted in your query, the Staff of that Committee was briefed on February 24. A member of the Foreign Relations Committee Staff was present at that briefing, at which Department officers made it plain that we would be happy to offer briefings to any other Staffers or Members who were interested.

We did not regard the presence of the lone SFRC Staffer as an appropriate briefing of the Committee Staff and, having dealt with the Committees of official jurisdiction, a briefing would have been proposed to the SFRC the following day. In the interim the Department was contacted by another Committee Staffer who had learned of our briefings and who expressed concern that no briefing had as yet been given to the SFRC. A verbal offer for a briefing was made in that conversation. Several other offers were made by telephone over the next several days and, when no reply was forthcoming, we went beyond what had been done with other committees and conveyed our offer by letter dated March 2 to Senator Boschwitz. In this letter we noted that the changes had been imposed on an interim basis only and that we intended to continue the process of consultation with interested Members of Congress.

It has been and remains the policy of the Department of State to engage in full and prior consultations with Congress whenever possible even in cases, such as this one, where advance consultation is not formally required. We regret that the press of time did not permit prior consultations satisfactory to the Committee, as the briefings were offered in the spirit of Executive-Legislative cooperation and in hopes of furthering that process.

Question 3. We understand one option that was rejected at the end of February was to extend the then-operational regulations for an additional 30 days

to allow for meaningful consultations on the proposed changes. Is that correct? If so, why? Are there any potential, proposed or pending sales which would be affected by the immediate change? If so, what are they?

Answer. Under the terms of Section 6(a)(2) of the Export Administration Act, 1981 controls would have expired on December 31 unless formally extended. Having asked the Congress once for an interim extension to complete our review of the controls, we felt that a second request for additional time would contradict the spirit of Section 6(a)(2). Both the Department of State and the Department of Commerce decided to proceed with the congressional consultations in order to avoid another interim extension of the controls. The only major case affected by this procedure is a possible sale of aircraft to Iraq, which we have discussed with the appropriate committee staff and which is more fully identified in a separate submission.

Question 4. Are the recent modifications in foreign policy export controls in final form or can they be modified further? Does this include restoring Iraq to the list of countries supporting international terrorism?

Answer. The modifications in the foreign policy export controls were published in the form of an interim rule. The rule could be modified and any decision to make the interim rule final would take into consideration comments received during the 60-day period for public comment. The Department of State has made it clear that Iraq would be again designated a repeated supporter of international terrorism should its future behavior so warrant.

Question 5. In what ways does the removal of Iraq from the list of countries supporting international terrorism "demonstrate the firm determination of the United States to oppose and distance itself from acts of international terrorism" as stated by Secretary Baldridge in his explanation of the criteria used in modifying the foreign policy controls?

Answer. As we indicated in our testimony on March 18, we believe that our decision concerning Iraq supports our objective of encouraging Iraq to take further steps to reduce its assistance to groups involved in international terrorism and at the same time focuses punitive measures on countries which are the source of greatest support for terrorist activities.

Question 6. It has been suggested that the decision to remove Iraq from the list of countries supporting international terrorism was made for foreign policy reasons. The motivation for the removal is said to be threefold:

(a) To try to pull Iraq closer to the West.

(b) To bolster resistance to Muslim fundamentalism while increasing U.S. favor in Saudi Arabia and Jordan at a time when Iraq is perceived as losing in the war with Iran.

(c) To advance sales by U.S. manufacturers in what is perceived as a fast growing market.

How do you respond to this assessment?

Answer. The decision to remove Iraq from the list of countries supporting international terrorism was made on the basis of a careful review of available evidence of Iraq's record of behavior with regard to international terrorism.

Question 7. In making the determination that Iraq was no longer to be included on the list of countries supporting international terrorism, which government agencies were consulted? What form did consultation take?

When did the consultation period begin? Within the Department of State, which offices or bureaus played a role in the determination on Iraq?

Did each of the bureaus involved do its own independent assessment on Iraq prior to the formulation of a Department position, If so, which, if any, of the bureaus argued that Iraq should not be removed from the terrorism list?

What role, if any, did the Commerce Department have in reviewing the case of Iraq? Was the Commerce Department an advocate of removing Iraq from the terrorism list?

When was a consensus reached on removing Iraq from the terrorism list?

Answer. After assessing a variety of intelligence and other information, the Secretary of State, in consultation with the Department of Commerce, determined that Iraq was no longer to be designated a repeated supporter of international terrorism.

The yearly review of export control policies under the Export Administration Act began in early August of 1981. The review of anti-terrorism controls was a part of broad-based review of export policies by the Departments of State and Commerce. The determination to remove the designation of Iraq as a reported supporter of international terrorism was made in late February.

Question 8. Has Iraq significantly reduced its support for international terrorism or has it merely changed the focus and perhaps visibility of its support and objectives?

Answer. Iraq has reduced its assistance to individuals and groups which employ terrorism. This trend consisted of the reduction or termination of financial and other forms of support for certain radical Arab factions, and the movement or expulsion of members of some of these factions out of Iraq. Iraq apparently has also reduced its relations with non-Arab extremist groups which employ terrorism. The limits Iraq has placed on employing terrorism represent a positive development.

Question 9. Was not support for terrorist groups among the reasons Iraq was cited in an April 1980 State Department letter to Senator Javits listing countries supporting international terrorism?

Answer. During 1980 and 1981 Iraq was designated a "repeated supporter of international terrorism" for the purpose of administering the Export Administration Act of 1979. This determination was based, in part, on Iraq's record of support for terrorist groups. There is persuasive evidence that Iraq has reduced or terminated its support for some of these groups.

Question 10. If Iraq's supposed lessening of support for international terrorism were to regress to its earlier form, what steps would the Administration be prepared to take in response?

Answer. We have made it clear that Iraq would be restored to the list of countries subject to controls under section 6(i) of the Export Administration Act of 1979 if its future behavior, which we will continue to scrutinize closely, warrants. In exercising this option, we would have to consider all of the available evidence of Iraq's behavior and any pattern of support for international terrorism, consistent with the Act.

Question 11. Given the well-documented past support by Iraq for international terrorism, what does the removal of Iraq from the terrorism list imply about our commitment to combat international terrorism?

Answer. The removal of Iraq from the terrorism list is based on the judgment that Iraq has demonstrated a reduction in its support for acts of international terrorism. It implies no lessening of our resolve to combat international terrorism. Should Iraq's future behavior warrant we will not hesitate to return Iraq to the list.

Question 12. According to a March 5, 1982 article in the Wall Street Journal, Iraq is looking to the West, including the United States, to sustain its effort in the war against Iran.

Have the Iraqi's made overtures to U.S. officials or industry indicating a desire to purchase military hardware and goods from the United States? If so, when and to whom were such overtures made?

Is it fair to say that the possibility of providing military hardware or other goods with military application would be foreclosed for the next 12 months if Iraq remained on the list?

Answer. Consistent with our policy of not approving the sale of defense articles and services to either combatant in the Iraq-Iran conflict, we have not approved the sale of U.S. origin military equipment, including equipment produced in third countries under U.S. license, to the Iraqi military. This policy has been spelled out repeatedly to U.S. companies as well as foreign intermediaries. It would be inappropriate to disclose the identity of any individuals or companies which may have made inquiries.

We intend to maintain our policy of strict neutrality in the conflict between Iraq and Iran which would preclude the shipment of items which would significantly enhance the military capability of either side. Shipments to the Iraqi military will not be affected by Iraq's removal from the terrorist list. It is not our policy to establish a military supply relationship with Iraq.

Question 13. Syria and South Yemen are retained on the terrorism list, yet a validated foreign policy license will no longer be required for export to either country of civil aircraft for use by their regularly scheduled airlines if "assurances against military use have been submitted to the Department of Commerce".

What approval is required for a validated license for foreign policy purposes? The same for national security purposes?

Would the State Department be fully consulted? Would the same bureaus be consulted as if a license were being scrutinized for foreign policy purposes?

Answer. Under Section 6(a)(4) of the Export Administration Act, the Secretary of State has a right to review any export license application that falls within

the ambit of the foreign policy export controls. Under Section 5(a)(1) of the Act, the Secretary of Commerce is obliged to consult with appropriate other departments on license applications for exports controlled for national security reasons. As a practical matter, applications for civil aircraft destined for Syria or South Yemen would first be reviewed to determine whether the assurances against military end-use were satisfactory. The exemption would not apply if the end-use assurance was unsatisfactory. In either case, the application would continue to be reviewed under national security controls.

Question 14. The requirement of an assurance against military use is somewhat ambiguous. Who provides the assurance—the exporter, importer, or the government of the country in which the regularly scheduled airline is based?

Answer. End-use assurances are submitted in conjunction with an export application and are signed by the ultimate consignee of the export. In the case of civil aircraft, the ultimate consignee would be the regularly scheduled civil airline. Should the consignee abrogate the end-use assurance clause, it would be subject to penalties under the Export Administration Act. We would have the option of preventing further shipments of aircraft and spare parts and servicing of such aircraft in third countries through Department of Commerce enforcement procedures.

Question 15. Given the fact that both Syria and South Yemen have been identified repeatedly as countries supporting international terrorism and thus in violation of the fundamental principles of international law, why should an assurance from either country be considered reliable by our government?

Answer. The assurances of the ultimate consignee are only one factor in the consideration of an application for the export of civil aircraft. While such assurances help to deter diversion to military end-use, the principal factor deterring such diversion is the desire of the importing country to continue the benefits of trade with the United States and avoid future restrictions on the sale of spare parts or servicing after a large initial investment in U.S. aircraft.

Question 16. The Fenwick Amendment underscored Congress' desire to be notified of the sales of large aircraft to nations supporting international terrorism because of potential military application; they might be diverted to carry troops and equipment.

If an assurance is received against military use by South Yemen or Syria, does this negate the otherwise implicit Fenwick Amendment requirement of 30 days notification to Congress of such sales?

Answer. As your question notes, the Fenwick Amendment requires notification of Congress prior to the issuance of a license for items of $7 million or more destined for a country designated as a repeated supporter of international terrorism and where the export would make a significant contribution to the military capability of such a country or enhance its ability to carry out acts of international terrorism. The available evidence suggests that there is no practical link between the use of civil aircraft exclusively by regularly scheduled airlines and international terrorism. Civil aircraft are, in fact, often the target of such terrorism rather than its instrument. Implicit in the decision that end-use assurances of the ultimate consignee were satisfactory is the determination that the export would not pose a significant contribution to the military capabilities of the country of destination nor its abilities to support international terrorism. As a result, the sale would not fall under the provisions of Section 6(i) of the Export Administration Act.

Question 17. Why have sales in the U.S. aircraft and avionics industries fallen in the Middle East in the last four years? Can you document any of the decline to the anti-terrorism controls?

Answer. Sales of U.S. civil aircraft to the Middle East have declined sharply over the last four years. From a pre-1978 market share of 94 percent, U.S. manufacturers now hold only 51 percent of the Middle Eastern market. It is our understanding that no new orders for U.S. aircraft were placed in 1981. Industry sources point to a variety of reasons for this decline, including export credits offered to foreign competitors by their governments, the high quality of the competition, and questions about the reliability of U.S. suppliers.

Question 18. According to the Secretary's enclosure, Airbus in 1981 sold a total of $980 million in aircraft to Middle Eastern countries. However, $500 million of this amount came from Libya. By comparison, U.S. sales during the first three quarters of 1981 were $400 million. Excluding Libya, the U.S. position appears to be relatively strong. Do you agree?

Answer. Excluding Libya, the U.S. sales in 1981 (which are accounted for upon delivery), reflect the decline of the U.S. share of what industry sources feel is a rapidly expanding market for civil aircraft. The figures you quote would indicate that U.S. market share had fallen to below 50 percent, excluding Libya, and had declined even more drastically if sales to Libya are included. They were over 90 percent in 1978.

Question 19. The Secretary's enclosure indicates that industry sources claim that well over $500 million in direct sales to the Middle East has been lost by the end of 1981. From which industry sources did you get your information? How did these sources conduct their analysis of the market? Did Commerce or State do its own independent analysis? From which countries were sales lost and were the losses due directly to the anti-terrorism controls?

Answer. The industry figures cited in the Secretary of Commerce's report are from the Industry Sector Advisory Committee (ISAC) No. 1, made up of aircraft companies and manufacturers' associations. The figures were used by the Department of Commerce to indicate what industry sources regarded as a steep decline in the U.S. manufacturer's competitive position in the Middle East aircraft market. They are largely corroborated by reporting available to us about purchasing decisions made by foreign airlines and export licensing cases. While it is difficult to say whether any specific sale depended on U.S. licensing policy for fulfillment, export controls are frequently cited by purchasers and foreign competitors as a factor in aircraft marketing in the Middle East.

Question 20. Mention is made of Kuwait urging other Gulf states to seek alternative suppliers in reaction to the imposition of U.S. anti-terrorism controls. Do you believe that the controls have had such an apparent negative impact? Is the Kuwait position possibly an excuse for not buying American products that have been rejected for other reasons? Is it true that Kuwait purchased more than $271 million worth of U.S. military equipment since the Fenwick Amendment was passed in late 1979?

Answer. Our controls on civilian aircraft for anti-terrorism purposes was regarded in many Arab countries as a political and even an anti-Arab gesture. The perception that the United States had politicized aircraft sales encouraged certain countries to give a greater weight to political considerations in deciding which aircraft to purchase. In the case of Kuwait, we firmly believe that the decision in 1981 to buy foreign rather than American equipment for the national airline has been heavily influenced by political considerations. We have been told by other senior Arab officials that our controls encouraged Arab countries to seek alternative suppliers. Kuwait has signed agreements for U.S. defense articles and services, totaling $174 million since late 1979, mostly for support or updating of weapons systems previously acquired from the United States.

Question 21. The Secretary's enclosure does not mention that major aircraft sales have been approved for Iraq after compliance with the Fenwick Amendment notification procedures. In discussing Airbus sales, the report does not mention that many U.S. industry experts say the Airbus has been helped by more favorable French financing terms. Why weren't these facts mentioned in the enclosure and aren't they relevant when considering U.S. commercial interests in the Middle East?

Answer. Industry sources have pointed to a variety of reasons for the decline in their market share in the Middle East. Certainly, with respect to their direct competition with the Airbus aircraft, industry sources have indicated their belief that financing has played a major role in the decision of several major airlines to contract with Airbus.

Question 22. What is our government's position on selling C–130's or other military transport planes to Iraq? If we would not sell, why, and if we would sell, why?

Answer. We adhere to a policy of strict neutrality with regard to the conflict between Iraq and Iran. We have moved to prevent the sale of items that would significantly contribute to the military capability of either side and have no intention of establishing a military supply relationship with Iraq and, therefore, would not approve the sale of C–130's to the Iraqi military.

Question 23. What is the status of the Iraq frigate engines? Where are the remaining six located?

Answer. The export license application covering the frigate engine cores has expired. The exporter has not reapplied. We presume the engine cores remain with the exporter.

Question 24. A list of licenses for Syria includes the following items: CCL 13610 wind tunnels (specified), value $112,990. CCL 45160 communications countermeasures equipment, $10,000. Please explain the type of wind tunnel sold to Syria, who was the purchaser and for what purpose will the wind tunnels be used. Also, please explain the nature of purchaser and use of the communications countermeasure equipment.

Answer. The wind tunnel licensed for Syria was not referred to the Department of State as wind tunnels are not controlled under the foreign policy export controls for Syria. The communications countermeasures devices approved for Syria included hand held transmitter detection equipment not controlled for foreign policy purposes for export to Syria. The equipment was exported to a law enforcement agency to be used in the detection of illegal communications devices.

SOUTH AFRICA

Question 25. What is your assessment of how African nations will perceive the relaxation of export controls for South Africa?

Answer. The Organization of African Unity has predictably already spoken out against the new regulations. However, the new, modestly revised U.S. controls remain substantially more restrictive than those of other countries, including African countries.

Question 26. How will relaxed export controls be perceived by the Blacks and Whites of South Africa? Do the relaxed controls and the policy of "constructive engagement" have the potential of increasing tensions in South Africa?

Answer. We believe that the revised export controls maintain a strong symbolic and practical disassociation of the United States from the practice of apartheid. President Reagan has made clear our abhorence of South Africa's racial policies. Our policy of constructive engagement is directed at doing something about apartheid, which affects both blacks and whites. The decision to modify the trade regulations was made consistent with that policy.

Question. 27. Do you believe that the sale of computers to a subsidiary of ARMSCOR and a branch of the Council on Scientific and Industrial Research would be in violation of the recently revised regulations implementing the U.N. arms embargo?

Answer, No, computers are not subject to the U.N. arms embargo. When the Export Administration regulations were revised and extended on March 1, no change was made in provisions which implement the U.N. Arms Embargo. Advanced computers are controlled to all consignees in South Africa for national security and nuclear non-proliferation purposes and to the Departments of Cooperation and Development, Justice, Community Development, Interior, and Manpower for foreign policy purposes.

Question 28. The structure of the South African defense industry obviously facilitates easy technology transfer among departments. Even with on-site inspection, how can we be assured that computers sold to South Africa will not contribute to the design and production of weapons?

Answer. Aside from on-site inspection, other factors inhibiting diversion are consignee signatures on end-use statements, the possibility of denial of spare parts and perhaps all of U.S. exports to an importer violating end-use assurances, and the liability of a conspiring exporter to civil and criminal penalties.

Question 29. Sperry must certify that the Univac 1182 to be sold to Atlas Aircraft Corporation would be used for "inventory maintenance and not for development of any kind of military capability." Is not inventory maintenance an integral part of the aircraft production process?

Answer. No. Any business must keep track of its inventory. Although Atlas does produce aircraft for the military, it also manufactures items for the civilian sector. Maintenance of its complete inventory is not viewed as contributing directly to the production of aircraft since the computer is not used in any way for the design or development of that aircraft.

Question 30. Foreign origin "equipment" can be sold to military and police on a case-by-case basis if it incorporates 20 percent or less by value of U.S. origin. Do you consider weapons as equipment? If so, what types of weapons?

Answer. Weapons would not be categorized as equipment under the 20 percent rule since they are subject to the U.N. arms embargo.

Question 31. How can we be assured that the six twin engine ambulance aircraft requested by the South African Defense Force will not be used to ferry

wounded troops from Namibia or Angola? In that connection, why was the end user certification requirement for aircraft and helicopters deleted from the export regulations? How can you assure the Congress that a vendor certification alone will be enough to prevent aircraft and helicopters sold to South Africa in the future from being used for miltiary purposes?

Answer. Requesting assurances against a certain end-use from an importer or conditioning the exporter's license assumes agreement in good faith. Should that agreement not be fulfilled, further sales from U.S. sources to the importer can be denied. If U.S. exporters violate license conditions, they are liable to civil and criminal penalties. Since the importer is beyond the jurisdiction of U.S. law, the change from requiring a written assurance from the importer to conditioning the export license makes enforcement efforts more meaningful. All export licenses are issued to a specific end-user. Any transfer of that item to another end-user requires additional authorization from the Commerce Department.

Air ambulances can be considered medical equipment, the export of which to the police and miltiary has been permitted since June 1981. Permission of such exports is consistent with Section 6(f) of the Export Administration Act, which prohibits future use of this Act as authority to control the export of medical items.

COMMERCE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR BOSCHWITZ

Question 1. What is your assessment of how African nations will perceive the relaxation of export controls for South Africa?

Answer. Foreign policy questions should be submitted to the Department of State for response.

Question 2. How will relaxed export controls be perceived by the Blacks and Whites of South Africa? Do the relaxed controls and the policy of "constructive engagement" have the potential of increasing tensions in South Africa?

Answer. These are all questions which are taken into consideration in formulating foreign policy and are within the purview of the Department of State.

Question 3. Do you believe that the sale of computers to a subsidiary of ARMSCOR and a branch of the council on scientific and industrial research would be in violation of the recently revised regulations implementing the U.N. arms embargo?

Answer. The regulations implementing the U.N. arms embargo have not been revised in some years. The recent changes in our foreign policy controls were adjustments to our unilateral controls, which went well beyond the U.N. arms embargo.

Question 4. The structure of the South African defense industry obviously facilitates easy technology transfer among departments. Even with on-site inspection, how can we be assured that computers sold to South Africa will not contribute to the design and production of weapons?

Answer. Our regulations prohibit sales of all but the smallest computers to the South African military. In permitting sales to civilian agencies, we carefully review each case to ensure that the equipment requested is appropriate for the stated end-use.

Question 5. Sperry must certify that the Univac 1182 to be sold to Atlas Aircraft Corporation would be used for "inventory maintenance and not for development of any kind of military capability". Is not inventory maintenance an integral part of the aircraft production process?

Answer. No. Any business must keep an inventory maintenance system. Since the computer is not used in any way other than inventory maintenance, we do not consider it to be in use for development of military capabilities.

Question 6. Foreign origin "equipment" can be sold to military and police on a case-by-case basis if it incorporates 20 percent or less by value of U.S. origin. Do you consider weapons as equipment? If so, what types of weapons?

Answer. The United States does not permit sales of munitions items to South Africa. One facet of our case-by-case review is to assure that U.S. components are not incorporated into foreign equipment that are prohibited under the U.N. arms embargo.

Question 7. How can we be assured that the six twin engine ambulance aircraft requested by the South African Defense Force will not be used to ferry wounded

troops from Namibia or Angola? In that connection, why was the end-user certification requirement for aircraft and helicopters deleted from the export regulations? How can you assure the Congress that a vendor certification alone will be enough to prevent aircraft and helicopters sold to South Africa in the future from being used for military purposes?

Answer. The purpose of air ambulances is to transport people in need of medical attention. We cannot assure that the wounded people being transported will not be military personnel. We deleted the lengthy additional certification requirement because it was an undue burden on the U.S. aircraft industry. Aircraft consignees in South Africa are still, however, required to furnish the same end-use certifications that we require for all other exports. We also require our exporters to warn their customers on the invoice and bill of lading that sales to the military and police are prohibited. We believe that these requirements will be as effective as those required in the past.

PROCEDURES AND CONSULTATIONS

Question 8. Do you agree that the removal of Iraq from the list of countries supporting international terrorism, as well as the modifications regarding Syria, South Yemen and South Africa, have important foreign policy implications? If so, what are they?

Answer. This matter is within the purview of the Department of State.

Question 9. On February 24, staff of the Senate Banking Committee was briefed on proposed modifications in the Export Administration Act regulations. Apparently, no formal offer was made to brief the members of staff of the Senate Foreign Relations Committee in a similar fashion. Only after inquiries were made by a member of the SFRC staff was an offer made to brief members of the Committee—and this was a day before the new regulations were sent to Congress on February 26.

Given the history of the concern and interest of the SFRC in matters concerning international terrorism, why wasn't the committee contacted at an earlier stage in the process, when consultations could have been meaningful, instead of literally at the 11th hour?

Answer. On February 25, the Department of Commerce held a briefing for members and staff of the Senate Committee on Banking, Housing, and Urban Affairs, the committee with primary jurisdiction over our export controls. Members and staff of the Foreign Relations Committee were also invited to attend. Due to concern that this briefing was not adequately publicized, a second briefing was held on March 8 at a time and date suggested by the Committee on Foreign Relations.

In addition, on March 18, Acting Deputy Assistant Secretary for Export Administration Vincent DeCain testified before the Near Eastern and South Asian Affairs Subcommittee to further explain these changes. The Department of Commerce will make a special effort in the future to discuss modifications of our foreign policy export controls with the Committee on Foreign Relations.

Question 10. We understand one option that was rejected at the end of February was to extend the then-operational regulations for an additional 30 days to allow the meaningful consultations on the proposed changes. Is that correct? Is it true that the Commerce Department opposed the extension? If so, why? Are there any potential, proposed or pending sales which would be affected by the immediate change? If so, what are they?

Answer. A further extension was not an option for the Department of Commerce, since intergovernmental consensus had been reached.

The Iraqi order for six L-100s was affected since the sale may now go forward without congressional notification.

Question 11. Are the recent modifications in foreign policy export controls in final form or can they be modified further? Does this include restoring Iraq to the list of countries supporting international terrorism?

Answer. The regulations issued to implement the recent foreign policy revisions were issued in interim form and have not yet been made final. The Export Administration Act of 1979 requires that foreign policy controls be reviewed not less than annually. They can be changed at any time the Departments of State and Commerce agree that such changes are appropriate. Responsibility for determining which countries support international terrorism rests entirely with the Secretary of State.

Question 13. In what ways does the removal of Iraq from the list of countries supporting international terrorism demonstrate the firm determination of the

United States to oppose and distance itself from acts of international terrorism" as stated by Secretary Baldridge in his explanation of the criteria used in modifying the foreign policy controls?

Answer. Secretary Baldridge specifically stated that continuing controls on Libya, Syria, PDR Yemen and Cuba demonstrates the firm determination of the United States to oppose and distance itself from acts of internatitonal terrorism. The Secretary of State determined that Iraq's improved record warranted its removal from the list of countries covered by the anti-terrorism controls.

REMOVING IRAQ FROM THE LIST OF COUNTRIES SUPPORTING INTERNATIONAL TERRORISM

Question 13. It has been suggested that the decision to remove Iraq from the list of countries supporting international terrorism was made for foreign policy reasons. The motivation for the removal is said to be threefold:

(a) To try to pull Iraq closer to the West.

(b) To bolster resistance to Muslim fundamentalism while increasing U.S. favor in Saudi Arabia and Jordan at a time when Iraq is perceived as losing in the war with Iran.

(c) To advance sales by U.S. manufacturers in what is perceived as a fast growing market.

How do you respond to this assessment?

Answer. This question lies within the jurisdiction of the Department of State.

Question 14. In making the determination that Iraq was no longer to be included on the list of countries supporting international terrorism, which government agencies were consulted? What form did consultation take?

When did the consultation period begin? Within the Department of State, which office or bureaus played a role in the determination of Iraq?

Did each of the Bureaus involved do its own independent assessment on Iraq prior to the formulation of a Department position? If so, which, if any, of the Bureaus argued that Iraq should not be removed from the terrorism list?

When was a consensus reached on removing Iraq from the terrorism list?

Answer. As part of our responsibility under the EAA, to assure full and complete review of foreign policy controls, the Department of Commerce asked the Department of State to review the records of the designated countries carefully to determine whether their designations as terrorist-supporting countries should be continued. The ultimate decision to impose or extend foreign policy controls rests with the Department of State.

Question 15. Has Iraq significantly reduced its support for international terrorism or has it merely changed the focus and perhaps visibility of its support and objectives?

Answer. This question lies within the jurisdiction of the Department of State.

Question 16. What time-frame was used in assessing Iraq's support for international terrorism?

To which groups that have engaged in acts of terrorism, has Iraq provided support? What forms have Iraqi support taken—money, sanctuary, weapons, training?

Is support still provided by the Iraqis to the groups it has been identified in the past as supporting?

According to a CRS compilation of radio broadcasts and other statements, groups with Iraqi ties claimed "credit" for at least half a dozen terrorist acts in 1981. Doesn't this indicate that Iraq is still supporting terrorism as the term was used in the Fenwick Amendment?

Answer. This question lies within the jurisdiction of the Department of State.

Question 17. Was not support for terrorist groups among the reasons Iraq was cited in an April 1980 State Department letter to Senator Javits listing countries supporting international terrorism?

Answer. This question lies within the jurisdiction of the Department of State.

Question 18. During the hearing, Mr. Twinam said that dating from the Soviet intervention in Afghanistan, "one sees what may be a very fundamental reorientation of Iraqi policy and patterns." Would you please detail the fundamental reorientation of Iraqi policy and patterns referred to by Mr. Twinam?

Has there been a "reorientation" of Iraq's support for terrorism against Israel? Against Jewish targets outside of Israel? If so, in what way?

Answer. This question lies within the jurisdiction of the Department of State.

Question 19. Was the 15th of May group responsible for the attack on a Jewish restaurant in Berlin during January 1982? Did the group claim "credit" for the attack? Isn't the May 15th group provided assistance by Iraq?

Answer. This question lies within the jurisdiction of the Department of State.

Question 20. According to the recently issued State Department Country Reports on Human Rights Practices:

"In 1981 there were creditable reports of government-directed assassinations of Iraqi dissidents in other countries."

In how many instances have actual or attempted assassinations of Iraqi dissidents taken place during 1981?

Was the Country Report assessment considered in making the determination that Iraq was no longer to be included on the list of countries supporting international terrorism? If not, why?

Answer. These questions lie within the jurisdiction of the Department of State.

Question 21. If Iraq's supposed lessening of support of international terrorism were to regress to its earlier form, what steps would the Administration be prepared to take in response?

What type or frequency of acts would it take to restore Iraq to the list?

Answer. This question lies within the jurisdiction of the Department of State.

Question 22. To the best of your knowledge, is the Congressional Research Service list of terrorist activities directly or indirectly linked to Iraq-related groups in the past two years accurate? Complete?

Answer. This question lies within the jurisdiction of the Department of State.

Question 23. How reliable and complete do you consider to be our intelligence community information on Iraq's support for international terrorism?

Answer. This question lies within the jurisdiction of the Department of State.

Question 24. Given the well-documented past support by Iraq for international terrorism, what does the removal of Iraq from the terrorism list imply about our commitment to combat international terrorism?

Answer. This question lies within the jurisdiction of the Department of State.

Question 25. According to a March 5, 1982, article in the Wall Street Journal, Iraq is looking to the West, including the United States, to sustain its effort in the war against Iran.

Have the Iraqi's made overtures to U.S. officials or industry indicating a desire to purchase military hardware and goods from the United States? If so, when and to whom were such overtures made?

Is it fair to say that the possibility of providing military hardware or other goods with military application would be foreclosed for the next 12 months if Iraq remained on the list?

Answer. Most military hardware and goods are controlled for export by the Department of State.

SYRIA AND SOUTH YEMEN AND CONTROLS ON CIVIL AIRCRAFT

Question 26. Syria and South Yemen are retained on the terrorism list, yet a validated foreign policy license will no longer be required for export to either country or civil aircraft for use by their regularly scheduled airlines if "assurances against military use have been submitted to the Department of Commerce".

What approval is required for a validated license for foreign policy purposes? The same for national security purposes?

Would the State Department be fully consulted? Would the same bureaus be consulted as if a license were being scrutinized for foreign policy purposes?

Answer. Both foreign policy and national security controls are in effect on aircraft for Syria and South Yemen, but the Secretary of State has determined that aircraft destined for regularly scheduled airlines would not make a significant contribution to the military potential of those countries, or enhance their ability to support acts of international terrorism. We consult with the Department of State to aid us in determining whether aircraft are, in fact, to be used by regularly-scheduled airlines. The Department of State could provide information as to what bureaus were consulted.

Question 27. The requirement of an assurance against military use is somewhat ambiguous. Who provides the assurance—the exporter, importer, or the government of the country in which the regularly scheduled airline is based?

Is the assurance a separate undertaking or a part of the purchase agreement? What legal affect does the assurance have? How can it be enforced?

Answer. We determine on a case-by-case basis whether assurances from the airline would be adequate, or whether further assurances from the government are necessary. In many cases the airlines themselves are government entities.

Assurances could be acceptable as a separate undertaking or a part of the purchase agreement, depending on the case. Assurances are part of the commitment under which export licenses are issued and evidence that these commitments have not been adhered to could result in withholding of future spare parts and denial of export licenses for additional aircraft.

Question 28. Given the fact that both Syria and South Yemen have been identified repeatedly as countries supporting international terrorism and thus in violation of the fundamental principles of international law, why should an assurance from either country be considered reliable by our government?

Answer. Assurances are fairly reliable because civil aircraft and its uses are highly visible. Violations of assurances should therefore be readily detectible.

Question 29. The Fenwick Amendment underscored Congress' desire to be notified of the sales of large aircraft to nations supporting international terrorism because of potential military application; they might be diverted to carry troops and equipment.

If an assurance is received against military use by South Yemen or Syria, does this negate the otherwise implicit Fenwick Amendment requirement of 30 days notification to Congress of such sales?

Answer. As incorporated in the EAA, the Fenwick Amendment underscores Congress' desire to be notified of the sales of items that the Secretary of State has determined would make a significant contribution to the military potential of countries designated as supporting international terrorism or that would enhance the ability of such countries to support acts of international terrorism. The Secretary of State has determined that civil aircraft destined for regularly-scheduled airlines would not make such a contribution. Therefore, 30-day notification of Congress is not required under the Act.

Question 30. Mention is made of Kuwait urging other Gulf states to seek alternative suppliers in reaction to the imposition of U.S. anti-terrorism controls. Do you believe that the controls have had such an apparent negative impact? Is the Kuwaiti position possibly an excuse for not buying American products that have been rejected for other reasons? Is it true that Kuwait purchased more than $271 million worth of U.S. military equipment since the Fenwick Amendment was passed in late 1979?

Answer. We do believe that the controls have had negative impact on U.S. aircraft sales in the Middle East. The Department of Commerce does not have information on the specific sales of U.S. miiltary equipment to Kuwait. The Department of Defense could provide that information.

Question 31. Why have sales in the U.S. aircraft and avionics industries fallen in the Middle East in the last 4 years? Can you document any of the decline to the anti-terrorism controls?

Why have sales to the Middle East by American manufacturers increased during 1981? Were sales of five planes to Iraq a factor? What is our present share of the Mideast?

Answer. It is impossible to say that the fluctuations in the fortunes of U.S. aircraft suppliers to the Middle East is entirely due to a reaction to the U.S. anti-terrorism controls. However, it is noteworthy that recent U.S. aircraft sales to the region have been limited to the relatively older models of aircraft (which are closer to the end of their product life-cycle), and do not represent any sales of the newest generation of large jet transports upon which the future of the aircraft industry lies.

The sales of the five planes to Iraq were a significant factor in the 1981 U.S. sales figure since they represented $193.6 million of the total.

The U.S. market share currently is zero. All planes sold in the Middle East last year were of Airbus manufacture. All others currently in use in the Middle East, however, are of U.S. manufacture.

Question 32. According to the Secretary's enclosure, Airbus in 1981 sold a total of $980 million in aircraft to Middle Eastern countries. However, $500 million of this amount came from Libya. By comparison, U.S. sales during the first three quarters of 1981 were $400 million. Excluding Libya, the U.S. position appears to be relatively strong. Do you agree?

Answer. The U.S. position does not appear strong in comparison to our foreign competitors. Indications are that approximately $10 billion worth of future con-

tracts may have been jeopardized over the next 10 years. For example, Airbus Industries has filled contracts of over $1 billion worth of new generation jet aircraft to the Middle East in 1981 alone. The recent success of the Airbus in the Middle East could mean that U.S. manufacturers will not be able to penetrate that particular market sector for another 15 or 20 years (the expected useful life of the Airbus).

Question 33. The Secretary's enclosure indicates that industry sources claim that well over $500 million in direct sales to the Middle East had been lost by the end of 1981. From which industry sources did you get your information? How did these sources do its own independent analysis of the market? Did Commerce or State do its own independent analysis? From which countries were sales lost and were the losses due directly to the anti-terrorism controls?

Answer. Our information was provided by the Industry Sector Advisory Committee on Aerospace Equipment (ISAC No. 1). Its analysis and report is public information.

Question 34. The Secretary's enclosure does not mention that major aircraft sales have been approved for Iraq after compliance with the Fenwick Amendment notification procedures. In discussing Airbus sales, the report does not mention that many of U.S. industry experts say the Airbus has been helped by more favorable French financing terms. Why weren't these facts mentioned in the enclosure and aren't they relevant when considering U.S. commercial interests in the Middle East?

Answer. Foreign subsidization of industry is an important element in an industry's competitive posture. U.S. industry is, and has been, facing considerable competitive disadvantage because of this practice abroad. With U.S. industry already handicapped by foreign subsidies, it is particularly important that we discontinue controls on equipment that has no direct relationship to support of terrorist activities. To continue these controls could only harm U.S. industry while further benefiting their foreign competitors.

Question 35. Have license applications been submitted for aircraft sales to Iraq? Syria? South Yemen? Libya? If so, what kind of planes and how many?

Answer. Under 12(c) of the EAA, such information is confidential. It can be provided only to the chairmen of the appropriate oversight committees upon written request.

Question 36. Please provide a list of commercial aircraft U.S. firms have sold since 1970 to the above countries including the dates of sale, the type and whether to the best of our knowledge, the planes have been used to carry military cargo or for other military or paramilitary purposes?

Answer. The Department of Commerce does not maintain such information. The most recent industry information, however, indicates that the following U.S. commercial transport category aircraft exceeding 12,500 pounds are on hand in these four countries:

Libya:	
B707–320C	1
B727–200	10
Syria:	
B727–200	3
B747–SP	2
PDR Yemen:	
B707–320C	2
B707B	1
DC–3	3
DC–6A	1
DC–6B	4
Iraq:	
B707–320C	3
B707–200	3
B737–200C	3
B747–200	2

Question 37. What is our government's position on selling C–130's or other military transport planes to Iraq? If we would not sell, why, and if we would sell, why?

Answer. C–130s are on the U.S. munitions list, controlled by the Department of State.

Question 38. What is the status of the Iraq frigate engines? Where are the remaining six located?

Answer. Under 12(c) of the EAA, such information is confidential. It can be provided only to the chairmen of the appropriate oversight committees upon written request.

Question 39. A list of licenses approved for Iraq includes the following items: CCL 4460 aircraft/helicopters, engine equipment, non M, for $13 million. Please explain the type of equipment. What type of helicopter was involved?

Answer. Under 12(c) of the EAA, such information is confidential. It can be provided only to the chairmen of the appropriate oversight committees upon written request. CCL 44600 is an entry that contains no complete aircraft or helicopters, so that any shipments of equipment under this entry would be limited to parts and accessories.

Question 40. A list of licenses for Syria included the following items: CCL 13610 windtunnels (specified), value $112,990. CCL 45160 communications countermeasures equipment, $10,000. Please explain the type of windtunnel sold to Syria, who was the purchaser and for what purpose will the windtunnels be used. Also, please explain the nature of purchaser and use of the communications countermeasure equipment.

Answer. Under 12(c) of the EAA, such information is confidential. It can be provided only to the chairmen of the appropriate oversight committees upon wriften request.

Senator BOSCHWITZ. Now, we will go into executive session.

[Whereupon, at 11:30 a.m., the subcommittee recessed, to reconvene in executive session.]

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